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Women's Access to Inheritance Property Rights for their Economic Empowerment in Albania

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Abstract

This work focuses on a much-neglected issue: the links between inheritance property rights, economic empowerment and domestic violence in Albania. It outlines why in Albania, where, despite of having a progressive gender neutral legislation with regard to inheritance property rights and despite that inheritance is considered as the main way for women to access property rights, few women own land either as wives or as daughters. A complex range of factors, legal, social, institutional, and ideological - are found to underlie the persistent gap between women's rights to inherit property. This work furthermore, tries to explain that it is precisely due to barriers to ownership, highlighting the importance of access to property rights for women's economic empowerment, that women in Albania are living in very difficult economic conditions, consequently very often they found their selves as being victims of domestic violence as a result of economic dependency. Hence, this thesis suggests that women's access to inheritance property rights in Albania is of a great importance as a tool for their economic empowerment, and for an end to domestic violence.

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Introduction

Research context

Property, in all its forms, is valued and recognised in all societies, as the principal asset/key factor influencing and enhancing an individual's socioeconomic status.

Historically, in developing countries, there has always been a significant difference between the rights of men and women in relation to property ownership and inheritance rights.¹ In recent times, many countries have moved to address this imbalance, by legislative changes, which appear, at least on paper, to bring equality to bear on the matter. However, how these changes operate in reality, often bears little resemblance to the spirit in which the legislation was rewritten.²

This is unfortunate, as no real progress can be made unless the new laws, and the rights they ascribe to are respectfully and rigorously enforced. Only then can they have the desired impact on the economic status of women and society, and contribute to the empowerment of women across different areas of life.

However, on a more positive note, some studies³ conducted in different countries worldwide, have indicated that, when properly implemented, these laws have had very impressive positive effects on the societies in question. Strengthening women's property rights, has been shown⁴ not only not only increase their bargaining power within the family, providing them with a sense of security and confidence, but also contributes to a higher status for them in society generally, ensures better education, health and nutrition for their children, and contributes to the reduction of gender-based violence.⁵ In addition to this, by guaranteeing women's property rights we are providing women with an economic tool that they can use in

¹ Food and Agriculture Organization of the United Nations, *Governing land for women and men. A technical guide to support the achievement of responsible gender-equitable governance of land tenure*, (FAO 2013).

² In India, the Hindu Succession (Amendment Act) of 2005 provides for equal inheritance regardless of gender, but the Muslim Personal Law does not, so people of different religions are treated differently; In Mozambique, statutory land law is gender-equitable and has clear provisions on equal rights for women and men. Decisions about land are generally based on customary law, as long as it is consistent with the Constitution and the Land Law, including provisions on gender equity; In Kyrgyzstan and Tajikistan, although national laws recognize women's rights to land, housing and property, customary law and traditional patriarchal approaches often prevail.

³ The Centre on Housing Rights and Evictions (COHRE) *Bringing Equality Home. Promoting and Protecting the Inheritance Rights of Women. A Survey of Law and Practice in Sub - Saharan Africa*, (COHRE 2004).

⁴ International Center for Research on Women, 'Property Ownership and Inheritance Rights of Women for Social Protection – The South Asia Experience Synthesis Report of Three Studies', (ICRW 2006); Bina Agarwal, 'Gender and Command Over Property: A Critical Gap in Economic Analysis and Policy in South Asia', [1994] vol 22 iss 10 World Development, <[https://doi.org/10.1016/0305-750X\(94\)90031-0](https://doi.org/10.1016/0305-750X(94)90031-0)> accessed 1994.

⁵ International Organization for Migration, 'Barriers to Women's Land and Property Access and Ownership in Nepal', (IOM 2016).

order to challenge domestic violence and the imbalance of power inherent in such behaviour, - a phenomenon impacting in very real and serious ways on the lives of women across the world. Indeed, recent research has suggested that security and ownership of land decreases the risk of domestic violence for some women, because economic independence means they are empowered to leave an abusive relationship.⁶

In relation to Albania, because of its history, the Albanian Civil and Family Codes present us with a very interesting case, to be considered in terms of inheritance property rights. The history of the family in Albania is a story of established customs and norms, which evolved from a feudal and rural past and are rooted in patriarchal social relations.⁷ These customs were, and in many cases, still are, a reflection of a complex code of unwritten law that was elaborated, cultivated, and practiced with specific regard to social relations of the family.⁸ Albanian society has been characterized as patriarchal, where a male head typically assumes the role of decision maker and financial controller of all the family business.⁹ Women had no property rights, no right to property inheritance.¹⁰ This description of traditional Albanian society serves as a historical reference point, by which we can analyse what occurs with regard to the actual legal framework of women's inheritance property rights in the contemporary Albania.

The Committee on the Elimination of Discrimination against Women, (fourth periodic report of Albania July 2016), in their concluding observations indicated, that “only 8 per cent of women own land”, and, in addition to this, they also noted, “that they are frequently discriminated against in matters of inheritance”¹¹. That said, according to some interviews conducted for a study titled ‘Women Property Rights in Albania’, judges and other experts emphasised, that “inheritance and marital property are the main ways women acquire land

⁶ Habitat for Humanity, ‘Shelter Report 2016. Level the Field: Ending Gender Inequality in Land Rights’ (Habitat for Humanity 2016).

⁷ Valentina Zace, *Marredheniet martesore sipas legjislacionit shqiptar, (Marital relations according to Albanian legislation)*, (Dituria 1999).

⁸ *ibid.*

⁹ Andreas Hemming, Gentiana Kera, Enriketa Pandelejmoni (ed) *Albania: Family, Society and Culture in the 20th Century*, (LIT 2012).

¹⁰ Arta Mandro, *Të Drejtat Pronësore Të Grave Në Shqipëri (Women's Property Rights in Albania)* (UN Women, Swedish Government, United Nations Albania 2016).; CEDAW, Concluding observations on the fourth periodic report of Albania, 25 July 2016, CEDAW /C/ALB/CO/4; Shadow report on the implementation of the CEDAW Convention in Albania conducted by Gender Alliance for Development Center (GADC), The Albanian Women Empowering Network (AWEN), The Network Against Gender-Based Violence and Trafficking submitted to the United Nation's Committee on the Convention on the Elimination of All Forms of Discrimination against Women, June 2010.

¹¹ CEDAW, Concluding observations on the fourth periodic report of Albania, 25 July 2016, CEDAW /C/ALB/CO/4.

rights” there¹². The 8% of women owning land, is a reflection of the challenges that women face in accessing property rights, but considering that inheritance is the main way on how they acquire property, it would appear relevant and important to analyse the reasons why behind this huge gap.

¹² Arta Mandro, *Të Drejtat Pronësore Të Grave Në Shqipëri (Women's Property Rights in Albania)* (UN Women, Swedish Government, United Nations Albania 2016).

Research question and aims

Taking into consideration the context described above, the research questions this work intends to explore are:

- (1) what are the factors that impede women's access to their inheritance property rights in Albania;
- (2) how do these barriers to ownership of real property influence their economic (and social) empowerment?

This thesis seeks to shed light on these issues, by identifying and analysing the legal, institutional and sociocultural barriers faced by women in accessing property inheritance rights, as one of the primary ways of women acquiring real property ownership in Albania. At the same time, this thesis aims to address the correlation between real property ownership titles and economic empowerment. I shall do so by underlining the importance of property ownership and women access to inheritance property rights to empower themselves to be economically independent, while at the same time enabling them to lift up from the abusive relationships where they are stuck because of the economic dependence.

Methodology and structure

The methodology adopted throughout this research is an interdisciplinary mainly legal but social and economic as well. The method adopted throughout this research is of a qualitative nature. This research explores the Albanian legal framework with regard to inheritance property rights, academic literature, academic papers, books, journals, articles, working papers and reports.

It is divided into three parts:

The first part is the main body of the thesis as it will present an in-depth analysis of women's inheritance property rights in Albania. It aims to provide the reader with the challenges that women face in Albania to access inheritance property rights. By applying a desk research of primary and secondary sources the author explores the legal framework of women's inheritance property rights in Albania from a gender perspective and some relevant sources such as, the CEDAW Concluding Observations on the Fourth Periodic Report of Albania, shadow reports conducted by NGOs, and a main report conducted on the access of women to property rights in Albania conducted by a law Professor, Arta Mandro, with the support of UN Women, Swedish Government and United Nations Albania, that shows how these provisions operate in reality. The analysis goes throughout the legal framework, different

periods of time in Albania, not just to understand how these rights evolved, but also to understand how and to what extent the past still influences the present.

Kanun, used to be very influential in Albanian context, and the inheritance property rights have also been affected by it.¹³ According to the Kanun of Leke Dukagjini only sons can inherit, daughters are excluded.¹⁴ This provision of the Kanun is reflected in the Albanian women's access to inheritance property rights nowadays, where women are very often discriminated in these issues.¹⁵ While analysing the context, it became apparent this is not just a matter of law and institutions, but also a matter of culture and mentality. Therefore, my analysis goes beyond the law¹⁶ and addresses, also, the socio-cultural barriers that impact on women accessing and enjoying these particular rights, highlighting the discrimination towards women in these issues.¹⁷ This work also endeavour to provide evidence, that apparent egalitarian inheritance property rights, do not necessarily lead to equality of result in practice. As mentioned above, this is a real concern raised by some reports conducted in this area. Ie:- Although the law seems to be based on the principle of equality between women and man in matters of inheritance property rights, the practice shows that in reality, we are being faced with a classic case of formal equality versus equality of result.¹⁸ Despite the fact that the legal framework is gender neutral, in practice the implementation seems to be discriminatory toward women and girls. This becomes obvious while analysing the findings

¹³ Kanun is a code of conduct used in different parts of Albania; See Aleks Luarasi, *Studime per te Drejten Zakonore Shqiptare - Marredheniet Familjare, (Albanian Customary Law Studies – Marital Relations)*, (Luarasi 2007); Justice and Peace Center, *Kanuni dhe Ligji (Kanun and Law)*, (Justice and Peace Center 1999); Giuseppe Valentini *Ligji I Maleve Shqiptare (Albanian Mountains Law)*, (Plejad 2007); Rachel Wheeler, 'Past and Present Land Tenure Systems in Albania: Patrilineal, Patriarchal, Family Centered' (1998) Land Tenure Center, University of Wisconsin - Madison USA Working Paper 5/1998, <<http://digital.library.wisc.edu/179322001>> accessed May 1998; Robert Elsie, 'Northern Albanian Culture and the Kanun', (2012), Symposium Albanese Tradities en Taal: 100 Jaar Onafhankelijk Albanië / Albanian Language and Culture: 100 Years of Independence, <<http://www.elsie.de/pdf/articles/A2012KanunLeiden.pdf>> accessed 16 May 2018.

¹⁴ Shtjefen Gjocov, *The Code of Leke Dukagjini*, (Gjonlekaj Publishing Company 1989).

¹⁵ Arta Mandro, *Të Drejtat Pronësore Të Grave Në Shqipëri (Women's Property Rights in Albania)*, (UN Women, Swedish Government, United Nations Albania 2016); CEDAW, Concluding observations on the fourth periodic report of Albania, 25 July 2016, CEDAW /C/ALB/CO/4; Shadow report on the implementation of the CEDAW Convention in Albania conducted by Gender Alliance for Development Center (GADC), The Albanian Women Empowering Network (AWEN), The Network Against Gender-Based Violence and Trafficking submitted to the United Nation's Committee on the Convention on the Elimination of All Forms of Discrimination against Women, June 2010; Shadow report conducted by Center for Legal Civic Indicators submitted to the 64th session of CEDAW, 2011.

¹⁶ Juliana Latifi, *E drejta Civile, Trashigimia (Civil Law, Inheritance)*, (GEER 2007); Andrea Nathanaili, *Pronesia (The Ownership)*, (1974).

¹⁷ *ibid.*

¹⁸ Commission for Citizenship, Governance, Institutional and External Affairs, 'Women's Empowerment in the Mediterranean Region', (European Union 2017); Besnik Maho, *Fitimi I Pasurive te Paluajtshme (The acquiring of ownership of property rights)*, (Uet/Press 2009); Andrea Nathanaili, *Pronesia (The Ownership)* (1974); Francesco Galgano, *E Drejta Private (Private Law)*, (Luarasi University Press 2006).

of the reports¹⁹ conducted on this issues while also giving due attention to some actual Albanian court cases addressing them, in order to show the discrepancy between the laws themselves and their practical application.

The main aim of the second chapter is, to focus the reader's attention on the important link between property and inheritance for women's economic empowerment, by analyzing these terms in juxtaposition with each other. This chapter starts by outlining the importance of property as an economic asset, calling the literature, economic theories and economist arguments to realize this.²⁰ Inheritance on the other hand, is considered by different legal systems to be as one of the main routs by which women acquire property.²¹ This section aims to clarify the link between inheritance and property, in terms of inheritance as a mechanism to acquire these economic assets. At the same time, it highlights the importance of ownership, considered also as an economic indicator,²² and its importance of understanding it as the legal instrument that gives the owner the opportunity to use the property.²³

The first part of this thesis, attempts to draw the reader's attention, to the causes of the barriers to women's ownership of property, the second part makes the link between property inheritance and economic empowerment. The third and final section of my work, draws section one and two together by demonstrating how lack of ownership titles has a crucial part to play in maintaining women's lower economic status. It further highlights how the gender differential in ownership and control of property plays a key role, not just in the gender gap in social status, but also in the economic well-being and empowerment of women in Albanian

¹⁹ Arta Mandro, *Të Drejtat Pronësore Të Grave Në Shqipëri (Women's Property Rights in Albania)*, (UN Women, Swedish Government, United Nations Albania 2016); Shadow report on the implementation of the CEDAW Convention in Albania conducted by Gender Alliance for Development Center (GADC), The Albanian Women Empowering Network (AWEN), The Network Against Gender-Based Violence and Trafficking submitted to the United Nation's Committee on the Convention on the Elimination of All Forms of Discrimination against Women, June 2010; Shadow report conducted by Center for Legal Civic Indicatives submitted to the 64th session of CEDAW, 201; CEDAW, Concluding observations on the fourth periodic report of Albania, 25 July 2016, CEDAW /C/ALB/CO/4.

²⁰ Deborah M Figart, Tonia L. Warnecke (ed), *Handbook of Research on Gender and Economic Life*, (Edward Elgar 2013); Boudewijn Bouckaert (ed), *Property and Economics*, vol 2 (2nd edn, Edward Elgar 2010); Eirik G. Furubotn and Svetozar Pejovich, 'Property Rights and Economic Theory: A Survey of Recent Literature' (1972), volume 10, *Journal of Economic Literature*, 1137; Michael Weir, 'Concepts of property', [2001], vol 7 iss 1 *The National Legal Eagle*,

< <http://epublications.bond.edu.au/nle/vol7/iss1/6> > accessed 1 Autumn 2001.

²¹ Charlotte Shoup Olsen and Ted Osborn, 'Inheritance: "A Tale of Two Perceptions"', (2006) Volume 1, *Online Journal of Rural Research & Policy*, issue 5.

²² Tapash Kumar Biswas and M. Kabir 'Measuring women's empowerment: Indicators and measurement techniques' [2004], Volume 34, *Social Change*, <<http://journals.sagepub.com/doi/abs/10.1177/004908570403400305>> accessed 1 September 2007.

²³ Chris Papageorgiou and Geoffrey K. Turnbull, 'Economic Development and Property Rights: Time Limits on Land Ownership', (2005), Volume 19, *Economic Development Quarterly*, 271; Cheryl Doss, Caren Grown, and Carmen Diana Deere, 'Gender and Asset Ownership: A Guide to Collecting Individual-Level Data' (2006) *World Bank Policy Research Working Paper 4704*, accessed 16 May 2018.

society generally.²⁴ Going through the economic situation of Albanian women, this section shows how concerning it is, where the majority of them live in poverty, some others are obliged to stay in abusive relationship not to fall into poverty.²⁵ My aim through this chapter is to address the consequences of barriers to ownership, illustrating how in the case of Albania these barriers are affecting women's economic empowerment. At the same time, this work is tentatively suggesting that, as a result of practical barriers to ownerships of property rights (including inheritance), the injustice inherent in these barriers also play a role in maintaining women's powerlessness when they find themselves trapped in abusive relationships with no means by which to escape, and set themselves up as economically independent from their abusive partners.

The limits of the research consist of a lack of substantial academic literature on the topic, specifically on Albania.

²⁴ Shadow report conducted by Center for Legal Civic Indicatives submitted to the 64th session of CEDAW Committee, 2016.

²⁵ Shadow report on the implementation of the CEDAW Convention in Albania conducted by Gender Alliance for Development Center (GADC) submitted to the 64th session of CEDAW committee 2016.

Chapter I

Challenges of Albanian women in accessing inheritance property rights

Egalitarian inheritance legal framework

“All are equal before the law and no one can be discriminated because of gender, descent, social origin or social status”.²⁶ Article 18 of the Albanian Constitution has determined the role of women and men in the society as equal, and has attempted to prevent discrimination, by addressing the same it through special articles as well as through the adoption of international conventions.

The right to private ownership is another important provision in the Albanian Constitution. According to this constitution both private and public property are considered as a solid base for the economic system of Albania.²⁷

With regard to property, and property rights, article 41 of the Albanian Constitution states that: ‘the right to private property is guaranteed and that the property is acquired by donation, inheritance..., and any other way foreseen by the Civil Code.’²⁸

At the same time Albania, has ratified many conventions, making them part of the Albanian legislation and guaranties for Albanian citizens.²⁹ Prominent among them are, the Universal Declaration of Human Rights, CEDAW Convention and the European Convention of Human Rights. Considering that Albanian constitutional law provides a monist model of the relationship between international treaties and national law, where international treaties upon ratification, become *ex proprio vigore*, part of the domestic legal order and directly applicable.³⁰ Treaties ratified by law have precedence over inconsistent laws.³¹

²⁶ Article 18 of The Republic of Albania Constitution, 1998.

²⁷ Article 11 of The Republic of Albania Constitution, 1998; Luan Omari and Aurela Anastasi, *E drejta Kushtetuese (Constitutional Law)*, (ABC 2008).

²⁸ Article 41 of The Republic of Albania Constitution, 1998.

²⁹ Luan Omari and Aurela Anastasi, *E drejta Kushtetuese (Constitutional Law)*, (ABC 2008).

³⁰ Article 5 and 122 of the Albanian Constitution, 1998.

³¹ Luan Omari and Aurela Anastasi, *E drejta Kushtetuese (Constitutional Law)*, (ABC 2008).

Inheritance is known as a derivative form of acquisition of ownership.³² It is one of the most important civil law institutes, because, it is considered to be a *mortis causa* way of acquisition of ownership, compared to all the other ways which happen *inter vivos*. The meaning of inheritance is set out by the article 316 of Albanian Civil Code, which establishes “inheritance as a way of transferring, by operation of law (intestate) or by will, the property (movable or immovable) of the deceased person to one or more persons (heirs) according to the rules determined in this Code.”³³

Inheritance provisions of the Albanian Civil Law, show several important features of inheritance, which are similar to the inheritance features in other legislations around the world.³⁴ However, the most important considering the main purpose of this thesis, is the one with regard to equality between women and men before the law. In the Albanian inheritance rights, the principle of equality is well established and recognised by law, not just between man and woman, but also between female and male children, as well as between children born from marriage and the ones born outside of it is.³⁵ It is important to highlight here that the principle of equality is formally given great importance by Albanian legislation. The whole legal system is written under this basic principle,³⁶ but unfortunately it is also flows due to the lack of attention paid to the reality of its implementation. In accordance with article 18 of the Albanian Constitution, women and man are treated equally in terms of inheriting. In the same way, children, regardless of their gender, and regardless to whether they were born from marriage, or outside of it, are also given equal status.³⁷

Albanian Civil Code,³⁸ recognises two ways of transferring inheritance, after the deceased's death, the property passes, from the deceased to the heirs on a legal basis, either by operation of law (intestate succession) or by will.

³² Besnik Maho, *Fitimi I Pasurive te Paluajtshme (The acquiring of ownership of property rights)*, (Uet/Press 2009).

³³ Article 316 of the Civil Code of the Republic of Albania, 1994.

³⁴ Laura Vorpsi and Arsim Sinani, ‘A Historical Overview of the Albanian Law of Inheritance’ (2013) Vol 2 Iss 3 *Anglisticum Journal (IJLLIS)* <https://www.academia.edu/3845795/A_Historical_Overview_of_the_Albanian_Law_of_Inheritance> accessed June 2013.

³⁵ Articles 360, 361 of the Civil Code of the Republic of Albania, 1994.

³⁶ Article 18 of The Republic of Albania Constitution, 1998; See also Luan Omari and Aurela Anastasi, *E drejta Kushtetuese (Constitutional Law)*, (ABC 2008); Ardian Nuni, Luan Hasneziri, *E drejta Civile III: Trashigimia (Civil Rights III: Inheritance)*, (Tirane 2010);

³⁷ Articles 361, 362 of the Civil Code of the Republic of Albania, 1994.

³⁸ Articles 360, 372 of the Civil Code of the Republic of Albania, 1994.

Inheritance by (intestate succession) law is applied, when the person leaving the inheritance has not made a will, or has made it only for a part of his property or when the will is entirely or partially invalid.³⁹

Juliana Latifi, in her analysis of the legislation argues, that while interpreting inheritance law as a supposed will of the deceased, the law defines the circle of the persons that are allowed to inherit.⁴⁰ In defining the circle of heirs that are allowed to inherit from the deceased, the law primarily considers blood connection and the adoption. According to article 360 the legal heirs are as follows, children, the children of the children, the spouse, parents, brothers and sisters and children of brothers and sisters deceased before, grandfather and grandmother and other persons born before, persons unable to work who are dependence of the person leaving the inheritance, his other kin up to the sixth degree as well as the state. These are called in inheritance according to the order determined in this Code. According to the Civil Code of the Republic of Albania, there are six rows and they are defined under article 360-367 of this Code.

The position of the survival spouse, according to the jurisprudence, is considered to be favourable in the case of intestate succession.⁴¹ In the first row, the spouse is called to inherit with the children, each inheriting in equal parts. When there are no other heirs of the first degree, (besides the spouse) the heirs of the following degree shall be called to inherit as provided for in Article 362, 363 of the Albanian Civil Code; and when there are no such heirs, the heirs of the next degree shall be called to inherit as provided for in Article 363,364 of this Code. In any case, the spouse receives half of the inheritance. When there are no heirs of the degrees above, the inheritance passes to the surviving spouse. However, despite the fact that the law seems to favour the surviving spouses, both wives and husbands, the practice shows that in many cases, women resign their inheritance rights.⁴² The reasons behind this behaviour will be addressed in the second part of this chapter.

³⁹ Article 317 of the Civil Code of the Republic of Albania, 1994.

⁴⁰ Juliana Latifi, *E drejta Civile, Trashigimia (Civil Law, Inheritance)*, (GEER 2007).

⁴¹ *ibid.*

⁴² Arta Mandro, *Të Drejtat Pronësore Të Grave Në Shqipëri (Women's Property Rights in Albania)*, (UN Women, Swedish Government, United Nations Albania 2016); Shadow report on the implementation of the CEDAW Convention in Albania conducted by Gender Alliance for Development Center (GADC), The Albanian Women Empowering Network (AWEN), The Network Against Gender-Based Violence and Trafficking submitted to the United Nation's Committee on the Convention on the Elimination of All Forms of Discrimination against Women, June 2010; Shadow report conducted by Center for Legal Civic Indicatives submitted to the 64th session of CEDAW, 201; CEDAW, Concluding observations on the fourth periodic report of Albania, 25 July 2016, CEDAW /C/ALB/CO/4.

Inheritance by will, in regard to Article 372, of Albanian Civil Code, testament is a legal unilateral transaction carried out by the testator, by which they dispose their property for the time after their death. According to Article 392 of the Albanian Civil Code there are two forms of testaments, holographic or by notarial act.

In spite of such apparently detailed breakdown of inheritance rights, it is relevant to emphasize that, according to the studies and reports examined in preparation for this thesis, daughters and wives very rarely inherit property by means of a will. Wills are generally drowned up in favour of sons.⁴³ Further analysis on these discriminatory behaviours toward women and girls in Albania are provided in the second section of this chapter.

After having introduced some of the most important features of the inheritance rights according to the Albanian Civil Code, highlighting the principle of equality between women and men, this section goes throughout some general provisions which seem to have been used as the legal basis for discrimination against women. During the analysis of these same provisions, the main aim is demonstrating the divergence between the law in paper and its implementation.

Of a particular importance in my analysis of the issues relevant to inheritance two elements stand out and appear to undermine and indeed sabotage the spirit of the legislation.

Ie:- Substitution of inheritance and renunciation of inheritance.⁴⁴

These two elements Must be highlighted, because as we will realise in the second part of this analysis, they have been misused in practice leading to serious discriminatory practices towards women and girls.⁴⁵ As it was previously mentioned, daughters and wives very often resign their rights, based on this two important elements, substitutions and renunciation. Article 326 of the Albanian Civil Code defines that substitution allows the substituents to be put in the place, degree and the rights of the person they substitute. As stated by this article,

⁴³ *ibid.*

⁴⁴ Ardian Nuni, Luan Hasneziri, *E drejta Civile III: Trashigimia (Civil Rights III: Inheritance)*, (Tirane 2010); Juliana Latifi, *E drejta Civile, Trashigimia (Civil Law, Inheritance)*, (GEER 2007).

⁴⁵ Arta Mandro, *Të Drejtat Pronësore Të Grave Në Shqipëri (Women's Property Rights in Albania)*, (UN Women, Swedish Government, United Nations Albania 2016); Shadow report on the implementation of the CEDAW Convention in Albania conducted by Gender Alliance for Development Center (GADC), The Albanian Women Empowering Network (AWEN), The Network Against Gender-Based Violence and Trafficking submitted to the United Nation's Committee on the Convention on the Elimination of All Forms of Discrimination against Women, June 2010; Shadow report conducted by Center for Legal Civic Indicatives submitted to the 64th session of CEDAW, 201; CEDAW, Concluding observations on the fourth periodic report of Albania, 25 July 2016, CEDAW /C/ALB/CO/4.

in the absence of one heir (in cases when he dies, when is declared unworthy, when he renounces or is excluded from inheritance), another heir comes in his place, in his degree and his rights. The substitution occurs in two main ways, in a straight line and in indirect line. Substitution in the straight-line descendants is without limits and in all cases, be it when the child of the decedent competes with the descendants of another child died earlier, or when the children of the decedent have died before him, and their descendants be or be not of the same degree, or by their number according to birth. To straight-line ascendants there is no substitution; the closest exclude others. In indirect line, the substitution is accepted in favour of children and descendants, brothers and sisters of the decedent, even if they compete with their uncles or aunts or their descendants to the same degree or not.⁴⁶ In practice women are very commonly forced or obliged to resign their rights in order to be substituted.⁴⁷ It will further be elaborated on it in more details, later in this thesis, precisely in the second part of this chapter.

This first part of the chapter aims to bring an overview of Albanian inheritance legal framework, which at first sights appears to be gender neutral and that formal equality among women and men in terms of inheritance property rights is well emphasised.⁴⁸ However, as we go through the challenges that women are faced with in accessing inheritance property rights⁴⁹, it becomes clear and obvious that in practice these provisions leads to women and girls' discrimination.

Provisions of the Albanian Family Code affecting inheritance

Property issues are of particular importance in the event of termination of marriages as a result of death of one of the spouses. Inheritance rights in relation to spouses property have very different implications depending on whether the marriage ended due to death or due to divorce,⁵⁰ with each of them living to different outcomes in terms of property rights.

⁴⁶ Ardian Nuni, Luan Hasneziri, *E drejta Civile III: Trashigimia (Civil Rights III: Inheritance)*, (Tirane 2010); Juliana Latifi, *E drejta Civile, Trashigimia (Civil Law, Inheritance)*, (GEER 2007).

⁴⁷ Arta Mandro, *Të Drejtat Pronësore Të Grave Në Shqipëri (Women's Property Rights in Albania)* (UN Women, Swedish Government, United Nations Albania 2016); Shadow report on the implementation of the CEDAW Convention in Albania conducted by Gender Alliance for Development Center (GADC), The Albanian Women Empowering Network (AWEN), The Network Against Gender-Based Violence and Trafficking submitted to the United Nation's Committee on the Convention on the Elimination of All Forms of Discrimination against Women, June 2010.

⁴⁸ Ardian Nuni, Luan Hasneziri, *E drejta Civile III: Trashigimia (Civil Rights III: Inheritance)*, (Tirane 2010); Juliana Latifi, *E drejta Civile, Trashigimia (Civil Law, Inheritance)*, (GEER 2007).

⁴⁹ Discussed and analyzed in the second section of this chapter.

⁵⁰ Arta Mandro, *E drejta Familjare – Familja, Femijet, Martesa, Bashkeshortet, (Family Law – Family, Children, Marriage, Spouses)*, (Emal 2009).

Considering that this thesis focuses mainly in inheritance rights, in the analysis which follows, I will only concern myself with the consequences of end of marriage due to death and the implications this has in terms of inheritance property rights.

Death of one of the spouses automatically entails the application of inheritance rights.⁵¹

An understanding of the Albanian Family Code provision, with regard to marital property regimes, is essential here, in order to understand the consequences, in terms of inheritance as a way of acquiring property, as a result of the death of one of the spouses.

At the outset, it is important to emphasize that the Albanian Family Code, similarly with the Civil Code, is also written in the spirit of equality between women and men.⁵²

According to the provisions of Civil Code in regard to inheritance, the surviving spouse is on the first row of the intestate successors.⁵³ As such, in accordance with the law, they can inherit movable and immovable property that belonged to the decedent. This Code, provides a comprehensive set of rules that are specifically dedicated to property rights for spouses, who following the death of the other spouse become subject to the rules of inheritance rights, *mortis causa*, in relation to the sharing of the estate.

In this part of the chapter I will limit myself to mentioning that in the Albanian Family Code, prescribed under Article 66 to 72, the marital property regime of spouses is prescribed by the law, in the absence of a specific agreement by the spouses designating their own regime, which must not be contrary to the provisions of this Code and any respective legislation.⁵⁴

The difference between these two regimes lies in the autonomy of the spouses to self-determination over the rules that govern their property issues.

These provisions are of at most importance when inheritance is open, in order to define which wealth will be subject to inheritance and how it will be divided out.

Summarising, the main purpose of this first part of this chapter is to introduce the Albanian legal framework on regard to inheritance property rights. Without a clear understanding of it, it would be difficult to demonstrate the contrast between the law on paper, and its application in practice, which will be covered later in this chapter.

⁵¹ Article 318 of the Civil Code of the Republic of Albania, 1994.

⁵² Arta Mandro, *E drejta Familjare – Familja, Femijet, Martesa, Bashkeshortet*, (Family Law – Family, Children, Marriage, Spouses), (Emal 2009); Arta Mandro Balili, *Gender discrimination in family and marital affairs*, (School of Magistrates and UNDP 2014).

⁵³ Article 360 of the Civil Code of the Republic of Albania, 1994.

⁵⁴ Arta Mandro-Balili, *E drejta Familjare, Familja: Femijet, Martesa dhe Bashkeshortet* (Family Law, Family: Children, Marriage and Spouses), (EMAL 2009).

Equal rights on paper vs. continued discrimination in practice

As was demonstrated in the paragraphs above, the law itself has a neutral nature in terms of gender. Inheritance rights are equally accessible for both women and men according to the provisions of the Civil Code of the Republic of Albania. However, the practice has shown, as yet implementation of these provisions provides a lot of opportunities for the discrimination against women in matters of inheritance. Apparently, there is a huge difference between the formal recognition of these particular rights, underpinned on the principle of equality before the law, and the guaranteeing of these rights at the same time.⁵⁵ These laws have played an important role, but their limits are apparent as they had not been able to address the deep – seated discriminatory structures, apparent in the challenges women face in accessing inheritance property rights. This section, outlines the main factors which influence this difference between formal equality and equality of result which is clearly evidenced in the findings of the reports referred to in this study.

There is a very limited range of empirical research in this area, the ones existing were conducted by different national, international, NGOs or international community mechanisms, all of them reflect, that women rarely inherit property, either as wives or as daughters.⁵⁶ The main reports this section of the thesis discuss are ie:-

- Women's Property Rights in Albania, conducted by Arta Mandro;
- Shadow report on the implementation of the CEDAW Convention in Albania conducted by Gender Alliance for Development Center (GADC), The Albanian Women Empowering Network (AWEN), The Network Against Gender-Based Violence and Trafficking submitted to the United Nation's Committee on the Convention on the Elimination of All Forms of Discrimination against Women, June 2010;
- Shadow report conducted by Center for Legal Civic Indicatives submitted to the 64th session of CEDAW, 2011;
- Committee on the Elimination of Discrimination against Women UN, 'Concluding Observations on the Fourth Periodic Report of Albania'.

Among the many issues highlighted in these reports, the most common were that: women don't claim their inheritance rights, women resign their inheritance rights, wills that are very

⁵⁵ United Nations Population Fund, 'At the Heart of Sex Selection, a Preference for Boys' (2012) <<https://www.unfpa.org/news/heart-sex-selection-preference-boys>>.

⁵⁶ *ibid.*

rarely in favour of daughters or wives, fictitious donation contracts are frequently done in order to prevent women inheriting their parent's or husband assets.⁵⁷

What are the reasons behind these findings? What is making women not claiming their inheritance rights, or resigning their inheritance rights, what is making fathers dispose of their wills in favour of their sons, to the exclusion of the women in their families? Why is society so supportive toward these issues?

This section considers these questions from various angles, in order to understand the factors that are making this discrimination possible.

Lack of knowledge and financial resources

Access to information is vital to access property rights. It is important to identify the level of knowledge that women have on legal and administrative policies regarding property, in order to understand the level of the awareness among them with regard to their rights.⁵⁸ One needs to know their rights in order to be able enjoy and to claim them.

In Albania, there is a general assumption,⁵⁹ set out clearly in different interviews and reports conducted by NGOs working on the field of women's rights in Albania, that a lack of information and awareness exists among women, in regard to inheritance property rights.⁶⁰

It is obvious that by law women and girls can claim and enjoy their rights, but as discussed above, in many cases they do not have any knowledge of what their rights actually are.

According to Arta Mandro report, women in Albania are very often manipulated in terms of property rights because of the lack of knowledge in matters of property rights. They do not claim their inheritance rights because they are not aware of them. In the light of her report, according to the judges interviewed, they pointed out that in many cases women were informed during a court case about the property rights entitled to them.⁶¹

⁵⁷ Arta Mandro, *Të Drejtat Pronësore Të Grave Në Shqipëri (Women's Property Rights in Albania)*, (UN Women, Swedish Government, United Nations Albania 2016);

Shadow report on the implementation of the CEDAW Convention in Albania conducted by Gender Alliance for Development Center (GADC), The Albanian Women Empowering Network (AWEN), The Network Against Gender-Based Violence and Trafficking

submitted to the United Nation's Committee on the Convention on the Elimination of All Forms of Discrimination against Women, June 2010; OECD Development Centre's Social Institutions and Gender Index (SIGI), 'Albania' (2014) <<https://www.genderindex.org/country/albania/>>.

⁵⁸ International Organization for Migration, *Barriers to Women's Land and Property Access and Ownership in Nepal*, (IOM 2016).

⁵⁹ Food and Agriculture Organization of the United Nations, *Governing land for women and men. A technical guide to support the achievement of responsible gender-equitable governance of land tenure*, (FAO 2013).

⁶⁰ Arta Mandro, *Të Drejtat Pronësore Të Grave Në Shqipëri (Women's Property Rights in Albania)*, (UN Women, Swedish Government, United Nations Albania 2016).

⁶¹ *ibid.*

Another very important element pointed out in the same report, influencing women claiming their rights or not, is the presents or absents of personal financial resources.⁶² In cases where they are prevented from accessing their inheritance rights, in clear violation with the law, it is very difficult for them to access justice given the high court costs. When women do decide to claim their right, the process can be tedious and prohibitively expensive.⁶³ “I once paid \$100 to a lawyer only for one court hearing,” recalls Xhani, who receives only \$30 a month in government subsidy and takes up part-time jobs to make ends meet.⁶⁴ These exorbitant legal fees mitigate against women perusing their claims in the courts.

Social and cultural barriers

‘A wife does not receive a share of inheritance either from her parents or from her husband... to prevent the clan of one Banner, mixing with the clan of another Banner.’⁶⁵

Behind their reasons not to claim or to resign their inheritance rights, there are also some crucial factors which continue to be very influential in the Albanian society.

Albanian society is noted for its patriarchal mentality and the strong influence of the customary law. ‘Wars, Ottoman Empire occupation, Kanun⁶⁶, bigotry, religions, levels of education, etc. are all part of this great mosaic that didn’t let the Albanian women get out of this ‘patriarchy box’.⁶⁷ The wife is the property of her husband and her parents, she is never emancipated; to be born a woman is to be born into bondage.⁶⁸

⁶² *ibid.*

⁶³ UN Women, ‘One room, her only home. An Albanian woman’s struggle to claim her property rights’ (*Un Women* 1 March 2018), <<http://eca.unwomen.org/en/news/stories/2018/03/feature-an-albanian-womans-struggle-to-claim-her-property-rights>> accessed on 1 March 2018.

⁶⁴ *ibid.*

⁶⁵ Shtjefen Gjecov, *The Code of Leke Dukagjini*, (Gjonlekaj Publishing Company 1989).

⁶⁶ Kanun is a code of conduct used in different parts of Albania; See Aleks Luarasi, *Studime per te Drejten Zakonore Shqiptare - Marredheniet Familjare*, (*Albanian Customary Law Studies – Marital Relations*), (Luarasi 2007); Justice and Peace Center, *Kanuni dhe Ligji (Kanun and Law)*, (Justice and Peace Center 1999); Giuseppe Valentini *Ligji I Maleve Shqiptare (Albanian Mountains Law)*, (Plejad 2007); Rachel Wheeler, ‘Past and Present Land Tenure Systems in Albania: Patrilineal, Patriarchal, Family Centered’ (1998) Land Tenure Center, University of Wisconsin - Madison USA Working Paper 5/1998, <<http://digital.library.wisc.edu/179322001>> accessed May 1998.

⁶⁷ Erind Mustafaraj ‘Outside the Walls of Albanian Patriarchy’, [2017] Iss 9 Analize – Journal of Gender and Feminist Studies < http://www.analize-journal.ro/library/files/numarul_9/9_6_erind_mustafaraj_102-115.pdf> accessed 2017.

⁶⁸ Elizabeth Zherka ‘Excluded from Power - Historical Gender Inequalities in Customary Law in Kosovo and Northern Albania, (Annual REECAS Northwest Conference, 2011), <https://jsis.washington.edu/ellisoncenter/wp-content/uploads/sites/13/2016/08/pdf-zherka.pdf> accessed 16 April 2011.

In patriarchal systems women tend not to have inheritance rights neither from their birth family nor their husband. This is due to a system of exclusive male inheritance rights⁶⁹, and to the need for each clan to protect its property for economic and defence purposes.

In Albanian customary law, inheritance follows the male line, with property going to a man's children and natal family after his death, rather than to his widow.⁷⁰ Traditionally, it is only the male children who inherit family property. Houses and land are held in the name of the oldest male relative. Such is the power of the traditional culture, that often, immovable property is retained in the name of a male relative long-since dead.

Let us now examine the influence of customary law and patriarchal mentality in the Albanian women's difficulties in accessing their rights.

In patrilineal marriages, which are more common in rural areas, women move to their husband's family once married. Within this practice, many of them lose their share of their natal family property due to lack of education and ignorance of their rights, or to the traditional resignation of their rights in favour of their brothers.⁷¹ This means that in the event of a woman finding herself in a violent or abusive marriage, she has no access to whatever land and property may have been available to her, had she claimed her rights in the first place. At the same time, in Arta Mandro's report it is shown that, married women going to live with their husband's family in the majority of the cases the properties gained during the marriage which should have been registered under the couple's joint names under the law, are instead registered under the husband's family,⁷² which ensures women are dispossessed in the event of his death. Women do not challenge this practice, either because it is difficult to prove their contribution retrospectively, or, because they feel the pressure of the patriarchal mentality society.⁷³ Arta Mandro report also shows that, in these cases, women find themselves under immense pressure both from their family members and the society. These two influences are also very apparent in the practices of fathers disposing of their wealth by will, only in favour of sons and excluding daughters.⁷⁴

⁶⁹ In patriarchal societies, inheritance of property, in the majority of the cases follows the male line. See: Rachel Wheeler, 'Past and Present Land Tenure Systems in Albania: Patrilineal, Patriarchal, Family Centered' (1998) Land Tenure Center, University of Wisconsin - Madison USA Working Paper 5/1998, <<http://digital.library.wisc.edu/179322001>> accessed May 1998.

⁷⁰ Aleks Luarasi, *Marrëdhëniet Familjare (Family relations)*, (SHB Luarasi 2001).

⁷¹ Food and Agriculture Organization of the United Nations, 'Gender, Agriculture and Rural Development in Albania. Country Gender Assessment Series', (FAO 2016).

⁷² Arta Mandro, *Të Drejtat Pronësore Të Grave Në Shqipëri (Women's Property Rights in Albania)*, (UN Women, Swedish Government, United Nations Albania 2016).

⁷³ *ibid.*

⁷⁴ *ibid.*

Legal spaces for depriving women from the inheritance rights

In the light to the process followed by the court, the issue of renunciation of the inheritance rights shows some important elements.

The legal basis for this legal act was⁷⁵ among articles 333 to 340 of the Albanian Civil Code where it was stated that: ‘the heirs have the right to renounce from inheritance. They can apply this right once the inheritance is opened. Renunciation of inheritance shall be made with a written statement and registered in the district court of the place where the inheritance was opened, or verbally in a court record. It could have also been done through a representative provided with a special power of attorney. Renunciation of inheritance can be made within 3 months from the opening of the inheritance and, when the heir is abroad, no later than 6 months. The heir who has correctly declared the wish to renounce inheritance or not, cannot annul the declaration later.’⁷⁶ These articles have been subject to recent amendments made by the legislator, now the written statements are made before the notary, where the inheritance is opened. Considering that the majority of the evidences with regard to this issue in discussion are as a result of the provisions before being amended, I found it relevant to refer to the content of these provisions before being amended.

According to these provisions first step is the opening of the inheritance, and the issuance of the death certificate. Thereafter, any heir may renounce their rights. According to the law the declaration has to be in a written form and to be registered in the Local Court District, or verbally through a court record. Both options leave ample opportunity for women to renounce their inheritance rights by choice, in the cases where they are subject to cultural traditional norms, or subject to pressure from family members into doing so, in the scenario where they are manipulated or intimidated. Even though according to the Albanian law declarations made under any kind of pressure are absolutely invalid and do not bring any legal consequence, this doesn’t really seem to be taken into consideration or not enough investigation is done in relation to these cases. The amendments of the law changed this process. The renunciation now is to be done before the notary. But this does not change the main concern which is the risk for women to continue renouncing their inheritance rights under pressure.

However, this critical aspect of the inheritance law seems to be used and interpreted in a way that seriously undermines women’s rights in relation to property.

⁷⁵ Juliana Latifi, *E drejta Civile, Trashigimia (Civil Law, Inheritance)*, (GEER 2007); Ardian Nuni, Luan Hasneziri, *E drejta Civile III: Trashigimia (Civil Rights III: Inheritance)*, (Tirane 2010).

The evidence⁷⁷ that wills are usually disposed in favour of the male heirs in the family and rarely in favour of daughter or wives highlights yet another problem. In the rare cases where daughters are mentioned in a will, they are bequeathed a minimal share of the inheritance. This practice draws attention to two main elements. When analysing article 377 of the Albanian Civil Code, it states ‘the decedent who leaves no descendants or ascendants, or no siblings, has the right to dispose of his property by testament in favour of any natural or legal person.’ It is apparent that in this formulation any mention of spouses is absent. The deceased according to this provision can dispose in favour of his daughter but not in favour of the wife.⁷⁸ When considering why women so rarely have access to property through this provision in practice seems to provide yet another legal basis for this concerning phenomenon.

Fictive donation contracts, done in order to prevent women from accessing their parents or husband inheritance, is also a very harmful practice which is highlighted and addressed with concern by one of the CEDAW shadow reports for Albania.⁷⁹ This report draws attention to the practise of donation contracts in regard to inheritance, whereby a husband donates his portion of the household property to a third party, meaning that the wife is unable to inherit in the event that her husband dies.⁸⁰ The report notes that there is no provision in Albanian law to protect the inheritance rights of wives and children in these cases. The Albanian law lacks an instrument that provides for the interests of the wife and child/ren, in cases of donation contracts and obviously, these leads to clear discrimination in relation to them.

Institutional barriers

In accessing inheritance property rights women are very often faced also with institutional barriers, the Cases from court practice raise some concerning issues where institutions are supportive in making this discrimination possible.

The District Court of Vlora in Albania, had an interesting case where two sisters were excluded out from their father’s inheritance by their brother.⁸¹ In this case the sisters, were legitimate heirs of the decedent inheritance, in the same way that their brother was, according

⁷⁷ Arta Mandro, *Të Drejtat Pronësore Të Grave Në Shqipëri (Women’s Property Rights in Albania)*, (UN Women, Swedish Government, United Nations Albania 2016).

⁷⁸ *ibid.*

⁷⁹ Shadow report on the implementation of the CEDAW Convention in Albania conducted by Gender Alliance for Development Center (GADC), The Albanian Women Empowering Network (AWEN), The Network Against Gender-Based Violence and Trafficking submitted to the United Nation’s Committee on the Convention on the Elimination of All Forms of Discrimination against Women, June 2010.

⁸⁰ *ibid.*

⁸¹ Decision no. 1012, date 14.05.2007 of the District Court of Vlora.

to the inheritance evidence (a document used to be issued by a Notary Office in Vlora). However, the inherited property was registered in the real estate local registration office, only in their brother's name, leaving out the two sisters. During the trial, it was proved that the inheritance evidence, was issued in violation of the law, leaving out the two applicants. The final court decision was in favor of the two sisters, recognizing their inheritance rights, and therefore entitling them to one quarter of the property for each of them, in accord with the new inheritance evidence.⁸²

The outcome of this trial, proved that the Notary office had been responsible for a violation in the law, by leaving the two applicants out of the inheritance of their father, so the son would be the only heir. Cases like this are very common in the court practices of Albania. This is not the only case where girl's inheritance rights were not validated.

However, on closer analysis of how and why this happens, it would appear, that whenever human rights of women are violated in this way, in the majority of cases, customs and traditions are indicated as being underlying factors.

Tracking the origins of discrimination against women in matters of inheritance.

When analyzing the difficulties faced by women in accessing inheritance property rights, we become aware of two main concerning issues that appear quite obvious in the whole analysis of the evidences. Ie:- The influence of the customary law and the patriarchal mentality. These two elements that were highly influential in the past history of Albania, seem to find 'spaces' to continue to influence in Albanian society nowadays. Moving forward, in the analysis of different periods of time, which were highly important in terms of the development of inheritance property rights, it becomes clear that the origin of discrimination against women in terms of accessing inheritance property rights has its roots in these two elements, customary law and patriarchal mentality.

Women's inheritance property rights under customary law

In the mid-twentieth century, the customary law known as Kanun was the only recognized authority.⁸³ It represented a series of norms, mores, and injunctions that were passed down by word of mouth for generations. The Kanun was the main source of customary law. Albanian customary law is contained within various Kanuns, the Kanun of Lek Dukagjini and

⁸² *ibid.*

⁸³ Aleks Luarasi, *Studime per te Drejten Zakonore Shqiptare - Marredheniet Familjare*, (Albanian Customary Law Studies – Marital Relations) (Luarasi 2007);

Skanderbeg being the most well-known.⁸⁴ Each of them operated in different regions of Albania during that period of time. For centuries, it strictly governed social behavior and everyday life among Albanians in different historical periods.

Property rights historically were regulated by customary law as well as by the positive law.

In the customary law of Albania, women were generally discriminated against in terms of property rights.⁸⁵ Albanian society has always been recognized as patriarchal and patrilineal.⁸⁶ Patriarchal in terms of where a male head typically assumes the role of decision maker and financial controller, and patrilineal, where membership in the family group is traced through the male line.⁸⁷ In traditional society, women gained access to property through their relationship to either father or husband in the context of the family.⁸⁸ They had no right to property inheritance. They had almost no access at all to property rights. However, since this thesis is focused on inheritance property rights, in this section there will be examined some of the provisions found historically in different Kanuns, about women's inheritance of property rights in Albania, where we will see the influence of the customary law, in the position of women in accessing inheritance property rights today.

According to the Kanun of Luma, "unmarried daughters were allowed to live in the property of their dead father but they were not called in his inheritance."⁸⁹ Only in the Kanun of Luma, there was such a provision, where daughters were called to inherit. If the descendent had only daughters, they were called to inherit his property but they were not owners of the property. They were only able to use it but not to sell it or to inherit it. That property wouldn't be transferred to their sons and daughters, but it would be returned to the male cousins by the father side in the event of their deaths.⁹⁰ In the Kanun of Leke Dukagjini, the provisions with

Justice and Peace Center, *Kanuni dhe Ligji (Kanun and Law)*, (Justice and Peace Center 1999); Giuseppe Valentini *Ligji I Maleve Shqiptare (Albanian Mountains Law)*, (Plejad 2007); Rachel Wheeler, 'Past and Present Land Tenure Systems in Albania: Patrilineal, Patriarchal, Family Centered' (1998) Land Tenure Center, University of Wisconsin - Madison USA Working Paper 5/1998, <<http://digital.library.wisc.edu/179322001>> accessed May 1998.

⁸⁵ Andreas Hemming, Gentiana Kera, Enriketa Pandelejmoni (ed), 'Albania: Family, Society and Culture in the 20th Century' (Lit Verlag GmbH&Co. KG Wien 2012); Elizabeth Zherka 'Excluded from Power - Historical Gender Inequalities in Customary Law in Kosovo and Northern Albania', (Annual REECAS Northwest Conference, 2011), <https://jsis.washington.edu/ellisoncenter/wp-content/uploads/sites/13/2016/08/pdf-zherka.pdf> accessed 16 April 2011.

⁸⁶ Aleks Luarasi, *Studime per te Drejten Zakonore Shqiptare - Marredheniet Familjare*, (Albanian Customary Law Studies – Marital Relations), (Luarasi 2007).

⁸⁷ Rachel Wheeler, 'Past and Present Land Tenure Systems in Albania: Patrilineal, Patriarchal, Family Centered' (1998) Land Tenure Center, University of Wisconsin - Madison USA Working Paper 5/1998, <<http://digital.library.wisc.edu/179322001>> accessed May 1998.

⁸⁸ *ibid.*

⁸⁹ Articles 1492, 1493, of the Kanun of Luma.

⁹⁰ Article 1529 of the Kanun of Luma.

regard to inheritance are addressed in Article 64 to 87. An important point here is that, in this Kanun, daughters were totally excluded by inheritance.⁹¹ Only sons were called to inherit. In the Kanun of Leke Dukagjini inheritance by will did not exist.

The Kanun of Skenderbeg⁹² is another Kanun known in Albania, also recognized as a source in Albanian positive right. In this Kanun there was provided an institute known as “selemi”, where selemi meant the movable property that the women brought from her parental family.⁹³ Since women left their parental families with this property they were excluded from the family property inheritance. At the same time, women were also excluded from inheritance in their husband’s families.⁹⁴

Islamic Law has also played a hugely influential law in Albanian Society. With the Ottoman invasion inheritance rights till 1929 were regulated by the Islamic law, called sharia.

Aleks Luarasi⁹⁵ and Nazmi Bicoku⁹⁶ and their studies conducted for that specific period of time, are the main sources used to bring an overview of the inheritance provisions during that period of time regulated by sharia law. According to their studies, women were mainly discriminated in terms of inheritance property rights. The only property right recognized for women under this law, was the autonomy they had in the use of their personal wealth.

If the decedent had one daughter and one boy as heirs, they were both called to inherit their father but the sharing of inheritance was in disfavor of the daughter. The boy would benefit 2/3 of the inheritance versus the daughter who would benefit only 1/3 of it.

⁹¹ Article 88 of the Kanun of Leke Dukagjini; Elizabeth Zherka ‘Excluded from Power - Historical Gender Inequalities in Customary Law in Kosovo and Northern Albania, (Annual REECAS Northwest Conference, 2011),

<https://jsis.washington.edu/ellisoncenter/wp-content/uploads/sites/13/2016/08/pdf-zherka.pdf> accessed 16 April 2011; Emine Zendeli ‘Legal-property relations of the spouses in the Albanian Customary Law’, [2013] vol 4, International Journal of Scientific & Engineering Research

< <https://www.ijser.org/> > accessed March 2013.

⁹² Which operated in the region of Kruja, Dibra, Kurbin (cities located in the North of Albania). This Kanun is the second most known after the Kanun of Lek Dukagjini.

For more see: Donato Martuci, Genc Lefe, *Il Kanun di Skanderbeg - Con la traduzione integrale del Kanuni i Skanderbegut di Frano Illia (The Kanun of Skanderbeg – with an integral translation of the Kanuni I SKenderbeut from Frano Illia)* (Edizione Grifo 2017).

⁹³ Donato Martuci, Genc Lefe, *Il Kanun di Skanderbeg - Con la traduzione integrale del Kanuni i Skanderbegut di Frano Illia (The Kanun of Skanderbeg – with an integral translation of the Kanuni I SKenderbeut from Frano Illia)* (Edizione Grifo 2017) Elizabeth Zherka ‘Excluded from Power - Historical Gender Inequalities in Customary Law in Kosovo and Northern Albania, (Annual REECAS Northwest Conference, 2011),

<https://jsis.washington.edu/ellisoncenter/wp-content/uploads/sites/13/2016/08/pdf-zherka.pdf> accessed 16 April 2011.

⁹⁴ Article 1287 of the Kanun of Skenderbeg.

⁹⁵ Aleks Luarasi, *Studime per te Drejten Zakonore Shqiptare - Marredheniet Familjare*, (Albanian Customary Law Studies – Marital Relations), (Luarasi 2007).

⁹⁶ Nazmi Bicoku, *E Drejta e Trashegimise e RPSSH (RPSSH Inheritance Right)*, (UT 1984).

At the same time, woman had no property rights over common property made during the marriage. According to the practice of the time, women could inherit a part of the estate after the death of her spouse. By 1929, except for some decisions relating to the right to benefit from the inheritance in the experience of this court, there is no occasion to address problems related to marital property after the death of the spouse.

Inheritance by will was an unknown form of inheritance in the sharia law.

Going through all these customary norms, it becomes apparent the reality and the vulnerability of women in Albania, in terms of accessing inheritance property rights. The traces of these norms, and this mentality are reflected in current life of Albania, still do not claim their inheritance rights. Sadly, they continue to resign their rights, and very often they are simply excluded from inheritance property rights.

Communist regime and women's access to inheritance property rights

After 1945 Albania, has undergone radical changes on terms of property rights. The Communist government from 1945 to 1985, made the eradication of private ownership of land its first priority.⁹⁷ The idea of individual rights to property held no meaning in that era.

However, the Constitution of this period of time in Albania guaranteed the principle of equality of women and man in every field of private, public and social life.⁹⁸ The advent of the following laws, recognised this important constitutional law, at least formally. In this part of the chapter, a great importance is given to the most important legal changes impacting on the inheritance property rights in general, and particularly women's access to these rights.

An important change during that period of time, affecting inheritance property rights were the changes on regard to the personal wealth of the spouses.⁹⁹ This personal wealth that the spouses possess at the moment of marriage would continue to be considered as personal wealth. In meanwhile, the wealth obtained by the spouses, together or separately, during the marriage would be part of the marital estate. It is interesting to note that this law stipulates that, in case of conflict between spouses with regard to the conjoint ownership of parts, to be taken in consideration should be given to the assistance given to each other in the carrying

⁹⁷ Clarissa de Waal 'Post – Socialist Property Rights and Wrongs in Albania: An Ethnography of Agrarian Change' [2004] vol 2, *Conservations and Society*, SAGE Publications
<http://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/7613/ConservatSoc2119-5590694_153146.pdf?sequence=1&isAllowed=y> accessed 12 October 2011.

⁹⁸ Article 17 of the Constitution of the Republic of Albania, 1946.

⁹⁹ Nazmi Bicoku, *E Drejta e Trashëgimise e RPSSH (RPSSH Inheritance Right)*, (UT 1984); The decree no 601/18.05.1948 "On Marriage".

out of the works of the house, and any other work on the addition or protection of common property.¹⁰⁰ The decree no 1892/05.07.1954 “On Inheritance” amended several times,¹⁰¹ in his article 21 sanctioned in the first row of inheritance were called children, the spouse, able or unable to work, parents, unable to work, as well as other people unable to work. Each of them inherited in equal parts.

Nevertheless, this period of time was characterised by a wave that aimed to bring equality among women and man not just in terms of inheritance property rights but in every field. As Marina Calloni argues:

During communism, there was an attempt at the modernisation of Albanian society and of women’s conditions. It initiated with the dictatorship of Enver Hoxa, who introduced legal equality for women and the formal possibility to become active in all sectors of work and society. This simply meant that, even though during Communism women were induced to participate in public life, nevertheless strong traditional impositions regulated daily life. Communism helped women in terms of economic occupation and political representation, but not in terms of symmetrical gender relations.¹⁰²

In the light of the above analysis, it becomes apparent that behind the missing link between the de jure and de facto equality with regards to access to inheritance property rights for women, clearly lies a difficult context in which these rights evolved in different periods of time. Additionally, the challenges that women face nowadays in accessing inheritance rights are a reflection of the persisting patriarchal mentality as well as the strong traditions inherited from the customary law.¹⁰³

¹⁰⁰ Nazmi Bicoku, *E Drejta e Trashëgimise e RPSSH (RPSSH Inheritance Right)*, (UT 1984).

¹⁰¹ *ibid.*

¹⁰² Marina Calloni, ‘Albanian Women after Socialism and the Balkan War’ (2002) Athena (Advanced Thematic Network in Activities in Women’s Studies in Europe) The Making of European Women’s Studies Utrecht University 2002, <<http://www.juragentium.org/topics/women/it/calloni.pdf>> accessed 2002 4.

¹⁰³ Rachel Wheeler, ‘Past and Present Land Tenure Systems in Albania: Patrilineal, Patriarchal, Family Centered’ (1998) Land Tenure Center, University of Wisconsin - Madison USA Working Paper 5/1998, <<http://digital.library.wisc.edu/179322001>> accessed May 1998.

Chapter II

Women, property, inheritance and economic empowerment

Within the legislative realm, the economic and financial inclusion of women is contingent on their legal status, vis-à-vis three key facets of economic activity: access to inheritance, access to property, and access to financial services.¹⁰⁴ In Albania, the civil law, as outlined in the analysis in the first chapter of this thesis, prescribes equal rights to inheritance for both men and women but traditional law, which only allows men to inherit, often takes precedence, leaving women very vulnerable in terms of accessing inheritance rights and all the financial opportunities that come with it.¹⁰⁵

Indeed, disproportionate responsibility for the burdens of poverty and the social and economic deprivation and disadvantage suffered by women is a global issue of concern, which has been in the spotlight for researchers¹⁰⁶ and policies makers for a very long time.¹⁰⁷

Since the 1980s, studies on the proliferation of female-headed households, and research into the social and gender-specific impacts of structural adjustment policies have led to increased attention being focused on what is become known as “the feminization of poverty.”¹⁰⁸ A global state of awareness is developing worldwide that poverty is becoming increasingly feminized, and furthermore that an increasing proportion of the world’s poor are female. While the statistic of 70% of women living in poverty worldwide is often contested¹⁰⁹, there

¹⁰⁴ Kyle Holloway, Zahra Niazi and Rebecca Rouse, *Women’s Economic Empowerment Through Financial Inclusion. A Review of Existing Evidence and Remaining Knowledge Gaps*, (Innovations for Poverty Action 2017).

¹⁰⁵ Arta Mandro, *Të Drejtat Pronësore Të Grave Në Shqipëri (Women’s Property Rights in Albania)*, (UN Women, Swedish Government, United Nations Albania 2016).

¹⁰⁶ Bina Agarwal, *Gender Challenges*, vol 2 (Oxford University Press 2015); Abigail Hunt and Emma Samman *Women’s economic empowerment. Navigating enables and constrains*, (Overseas Development Institute 2016); See also 2015 Landesa, ‘Why Women Land’ <<https://www.landesa.org/what-we-do/womens-land-rights/>> accessed 4 July 2018.

¹⁰⁷ UN Women, World Bank, 'UN Women and the World Bank unveil new data analysis on women and poverty' (*Un Women*, 9 November 2017) <<http://www.unwomen.org/en/news/stories/2017/11/news-un-women-and-the-world-bank-unveil-new-data-analysis-on-women-and-poverty>> accessed 13 May 2018; UN, Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, 27 October 1995, UN Doc A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995); UNGA, Transforming our world: the 2030 Agenda for Sustainable Development, 25 September 2015, UN Doc (A/70/L.1).

¹⁰⁸ UN, Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, 27 October 1995, UN Doc A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995).

¹⁰⁹ Carolina Sanchez; Anamaria Munoz-Boudet, 'No, 70% of the world’s poor aren’t women, but that doesn’t mean poverty isn’t sexist' (*The World Bank*, 3 August 2018) <<http://blogs.worldbank.org/developmenttalk/no-70-world-s-poor-aren-t-women-doesn-t-mean-poverty-isn-t-sexist>> accessed 13 May 2018.

does not appear to be a similar concern that the majority of the population living in poverty is women and girls.¹¹⁰

At the same time, women's economic empowerment as a tool to fight the poverty of women, has been in the centre of global policies, its achievement is now a global policy priority in light of its potential contribution to the Sustainable Development Goals.¹¹¹ This focus can support Agenda 2030 ambitions, around growth, decent work, poverty reduction, well-being and human development.¹¹²

This section explores why investing in women's economic empowerment may be a goal worth perusing. Recent researches show, that women's economic advancement has led to increased investments in children's education and health, and has also reduced household poverty.¹¹³ Recent estimates suggest that gender parity, overall has the potential to boost global gross domestic product (GDP) by between \$12 trillion and \$28 trillion between now and 2025, and it has been shown that 'national economies lose out when a substantial part of the population cannot compete equitably or realize its full potential'.¹¹⁴ This research obviously has clear implications for any society in which women's economic empowerment is undermined, similarly with the Albanian case where women are in very vulnerable economic position due to several factors, such as low participation in labour force, gender wage gap, low access to property rights etc.¹¹⁵

Furthermore, the link between the property rights and economic empowerment of women has been highlighted by economist theories¹¹⁶ and global policies¹¹⁷. The exclusion of women toward these rights has been considered as one of the main reason for their poverty and their

¹¹⁰ UN Women, World Bank, 'UN Women and the World Bank unveil new data analysis on women and poverty' (*Un Women*, 9 November 2017) <<http://www.unwomen.org/en/news/stories/2017/11/news-un-women-and-the-world-bank-unveil-new-data-analysis-on-women-and-poverty>> accessed 13 May 2018.

¹¹¹ UNGA, United Nations Millennium Declaration, 18 September 2000, UN Doc (A/55/L.2).

¹¹² UNGA, Transforming our world: the 2030 Agenda for Sustainable Development, 25 September 2015, UN Doc (A/70/L.1).

¹¹³ Abigail Hunt and Emma Samman *Women's economic empowerment. Navigating enables and constrains*, (Overseas Development Institute 2016).

¹¹⁴ *ibid.*

¹¹⁵ UN Women and UNDP, 'Gender Brief Albania 2016' (2016) <http://www.un.org.al/sites/default/files/UNW%20Gender%20Brief%20Albania%202016_EN_web.pdf>.

¹¹⁶ Bina Agarwal, *Gender Challenges*, vol 2 (Oxford University Press 2015); Deborah M Figart, Tonia L. Warnecke (ed), *Handbook of Research on Gender and Economic Life*, (Edward Elgar 2013).

¹¹⁷ UN Women, World Bank, 'UN Women and the World Bank unveil new data analysis on women and poverty' (*Un Women*, 9 November 2017) <<http://www.unwomen.org/en/news/stories/2017/11/news-un-women-and-the-world-bank-unveil-new-data-analysis-on-women-and-poverty>> accessed 13 May 2018; UN, Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, 27 October 1995, UN Doc A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995); UNGA, Transforming our world: the 2030 Agenda for Sustainable Development, 25 September 2015, UN Doc (A/70/L.1).

weak economic position. However, at the same time their right to access and control of property has been put forward as a main avenue for their economic empowerment.

In the recent years, international agreements have repeatedly reiterated the importance of women's land and property rights. The Beijing Platform for Action affirmed that women's right to inheritance and ownership of land and property must be recognized.¹¹⁸ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has underscored it, referring to rural women's rights to equal treatment in land and agrarian reform processes.¹¹⁹ Women's property rights are an implicit part of achieving the Millennium Development Goals, specifically goal 1 on eradicating extreme poverty and Goal 3 on gender equality.¹²⁰

Bina Agarwal, a feminist economist, argues while challenging conventional approaches to women's empowerment, demonstrates how promoting access to property, especially land, is key to enhancing women's economic and social well-being and deterring domestic violence.¹²¹

Through this section the attempt is to highlight the important link between property and inheritance for women economic empowerment, through analyzing these terms in correlation with each other. Considering that women economic situation in Albania is very concerning, partly as a result of the challenges that these women face in accessing property and inheritance rights, this section aim is to bring into the attention why is it worth it provide women access and control over inheritance property rights to lift themselves up economically highlighting that inheritance is the most favorable way for women to acquire it.¹²² Although the impact of women property rights is considered to be evident on both physical investment and human capital investment (education), the primary focus of this section analysis will be their impact on physical investment. When analyzing these issues, we end up to the legal and economic concept of ownership (considered also as an economic indicator)¹²³ and its

¹¹⁸ UN, Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, 27 October 1995, UN Doc A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995).

¹¹⁹ UN, Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, UN Doc 34/180.

¹²⁰ UNGA, Transforming our world: the 2030 Agenda for Sustainable Development, 25 September 2015, UN Doc (A/70/L.1).

¹²¹ Bina Agarwal, *Gender Challenges*, vol 2 (Oxford University Press 2015).

¹²² Michael Weir, 'Concepts of property', [2001], vol 7 iss 1 The National Legal Eagle, <<http://epublications.bond.edu.au/nle/vol7/iss1/6>> accessed 1 Autumn 2001.

¹²³ Tapash Kumar Biswas and M. Kabir, 'Measuring women's empowerment: Indicators and measurement techniques' [2004], Volume 34, Social Change, <<http://journals.sagepub.com/doi/abs/10.1177/004908570403400305>> accessed 1 September 2007.

importance of understanding it as the instrument that gives the owner the opportunity to use the property.¹²⁴

Property rights and women economic empowerment

Understanding women's economic empowerment

Before going to an analysis, how investing in ensuring women to have secure land and property rights is one of the most effective long-term solutions to advancing women's economic empowerment, we must understand the concept of women economic empowerment. There is increasing recognition that economically empowering women is essential, in order to both realize women's rights and also to achieve broader development goals such as economic growth, poverty reduction, health, education and welfare.¹²⁵

The Beijing Platform for Action spoke of the need to promote women's economic independence, including employment, and also the need to 'ensure equal access for all women... to productive resources, opportunities and public services'.¹²⁶ The Millennium Development Goals on gender equality and women's empowerment adopted an increase in women's share of non-agricultural employment as one of its key indicators of women's empowerment.¹²⁷ However, as emphasised by Naila Kaber, 'neither of these documents attempted to define women's economic empowerment, but their formulation paved the way for a greater equality between women's economic empowerment and their access to

¹²⁴ A. M Honore, 'Ownership', in Patricia Smith (eds), *The Nature and Process of Law. An Introduction to Legal Philosophy*, (Oxford University Press 1993); Chris Papageorgiou and Geoffrey K. Turnbull, 'Economic Development and Property Rights: Time Limits on Land Ownership', (2005), Volume 19, *Economic Development Quarterly*, 271; Cheryl Doss, Caren Grown, and Carmen Diana Deere, 'Gender and Asset Ownership: A Guide to Collecting Individual-Level Data' (2006) World Bank Policy Research Working Paper 4704, accessed 16 May 2018; Besnik Maho, *Fitimi I Pasurive te Paluajtshme (The acquiring of ownership of property rights)*, (Uet/Press 2009); Andrea Nathanaili, *Pronesia (The Ownership)*, (1974).

¹²⁵ UN, Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, 27 October 1995, UN Doc A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995); World Bank, 'World Development Report 2012 Gender Equality and Development', (World Bank 2012); World Bank, 'Gender: Working Towards Greater Equality, Gender Equality as Smart Economics: A World Bank Group Action Plan' (World Bank 2007); Sida, 'Supporting Women's Economic Empowerment: Scope for Sida's Engagement', (Sida 2015).

¹²⁶ UN, Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, 27 October 1995, UN Doc A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995).

¹²⁷ UNGA, United Nations Millennium Declaration, 18 September 2000, UN Doc (A/55/L.2).

productive resources’.¹²⁸

Different studies and researches were conducted by a range of institutions, organizations, authors, such as World Bank, SIDA, ICRW etc, tried to define this concept, where the main focus would always be the economic sector.¹²⁹

The World Bank argues that addressing gender inequalities with women’s economic empowerment is ‘smart economics’.¹³⁰ They argue that greater gender equality enhances productivity, improves development outcomes for the next generation, and make institutions more representative. The World Bank further states that greater control over household resources by women can enhance countries’ growth prospects by changing spending patterns in ways that benefit children. In fact, improvements in women’s education and health have been linked to better outcomes for their children in countries as varied as Brazil, Nepal, Pakistan, and Senegal. The third message from the World Bank is that empowering women as economic, political and social actors can change policy choices and ensure more representative decision-making. However, the definition the World Bank is one of the few actors to have tried defining women’s economic empowerment. The World Bank definition focuses principally on markets, making markets work for women and empowering women to compete in markets’.¹³¹

Sida’s definition of women’s economic empowerment goes beyond the market and also encompasses change in relation to access and control over critical economic resources and opportunities. It also addresses the need to eliminate structural gender inequalities in the labour market and reduce women’s unpaid work. According to Sida women can achieve economic empowerment if (1) The resources are available and women have the knowledge and skills to utilize them; (2) They have access to economic opportunities and control over

¹²⁸ Naila Kabeer ‘Women’s Economic Empowerment and Inclusive Growth: Labour Markets and Enterprise Development’ [2012] Centre for Development Policy & Research, School of Oriental & African Studies, University of London Research Paper 10/2012
< <https://www.soas.ac.uk/cdpr/publications/papers/file80432.pdf>> accessed October 2012.

¹²⁹ World Bank, *World Development Report 2012 Gender Equality and Development*, (World Bank 2012); World Bank, *Gender: Working Towards Greater Equality, Gender Equality as Smart Economics: A World Bank Group Action Plan* (World Bank 2007); Sida, *Supporting Women’s Economic Empowerment: Scope for Sida’s Engagement*, (Sida 2015);

Naila Kabeer ‘Women’s Economic Empowerment and Inclusive Growth: Labour Markets and Enterprise Development’ [2012] Centre for Development Policy & Research, School of Oriental & African Studies, University of London Research Paper 10/2012
< <https://www.soas.ac.uk/cdpr/publications/papers/file80432.pdf>> accessed October 2012.

¹³⁰ World Bank, *World Development Report 2012 Gender Equality and Development*, (World Bank 2012).

¹³¹ World Bank, *Gender: Working Towards Greater Equality, Gender Equality as Smart Economics: A World Bank Group Action Plan* (World Bank 2007);

the economic benefits of those opportunities; and (3) They can use those benefits to make strategic choices leading to positive changes in their lives.¹³²

According to the ICRW's report on this issue, they define women's economic empowerment as having a basis on two main elements. A woman would be economically empowered when she has both the ability to succeed and advance economically and the power to make and act on economic decisions. The first element highlighted in this definition is, to ***succeed and advance economically***, ie: - women need the skills and resources to compete in markets, as well as fair and equal access to economic institutions. The second element they describe is to ***have power and agency*** to benefit from economic activities, ie: - women need to have the ability to make and act on decisions and control resources and profits. In both cases resources are considered as the main avenue to this.¹³³

When considering the main theme of this thesis, among other resources considered as key factors in women's economic empowerment, such as human capital, financial capital, social capital, physical capital that includes land and property is the one that is of most importance. This thesis argues that land and property rights are the key entrance to other capitals, thus making them the most critical factor, in this instance, for women's economic empowerment.

Conceptualizing property

The importance of assets and properties has been emphasized by an abundant number of economic studies around the world.¹³⁴ While the economic perspective defines the importance of property in terms of the role of properties in the economic growth, the legal perspective of property rights, on the other hand, defines the 'rules of the game', determining who gets to do what, and who must compensate whom if damages occur.

From an economic approach, the capitalist economic system is based on the ownership of private property and market exchange. The property that is privately owned, generally refers to productive assets: tools and machineries that can produce other goods.¹³⁵ The owners of these assets can provide for themselves and their families, by using these assets for their own

¹³² Sida, *Supporting Women's Economic Empowerment: Scope for Sida's Engagement*, (Sida 2015).

¹³³ International Center for Research on Women, *Understanding and Measuring Women's Economic Empowerment. Definition, Framework and Indicators* (International Center for Research on Women 2011).

¹³⁴ Charles F. Floyd, *Real Estate Principles*, (Longman Group USA Inc. 1990); Pierre – Joseph Proudhon, *What is property?* (Cambridge University Press 1994); Alan Ryan, *Property*, (Open University Press 1987).

¹³⁵ Deborah M Figart, Tonia L. Warnecke (ed), *Handbook of Research on Gender and Economic Life*, (Edward Elgar 2013).

consumption, using them to produce other goods for sale either through their own labour or hired labour, or renting them out to others.¹³⁶ From this point of view, we realise that properties are assets that give the individual who owns them and controls them more options and more bargaining power to ensure that they receive a larger share of the goods produced or the incomes generated.¹³⁷

From the legal point of view, Stephen Munzer¹³⁸, argues that, generally in the literature we find two main definitions of property. The most popular one, which is the property as a thing ie: - land, houses tools factories etc. It also includes intangible things such as copy rights, patents, etc. The other definition, according to him, is the sophisticated one, which is - property as relations. More precisely it consists in certain relations, usually legal relations among persons or other entities with respect to things. Pierre – Joseph Proudhon similarly, argues that under property, one may distinguish between, property pure and simple, the right of a domain over a thing, and possession as a matter of fact not of right.¹³⁹

According to Michael Weir, in his discussion about this relationship, he argues that the property has a very broad and abstract meaning. Rather than referring directly to a material object such as a parcel of land, the concept of property is often said to refer to a bundle of rights that may be exercised with respect to that object.¹⁴⁰ The most important right, also conceived of as being the highest form of "property" or relationship with the thing or land being considered, is ownership.¹⁴¹

By analysing these concepts, we come to the main argument of this section.

First of all, property rights are resources from which one can produce other financial resources and secondly, the ownership provides you with ‘the tools’ to make it possible.

In consideration of these definitions, it is important to have a clear overview with regard to the concept of ownership over a property.

Honore, in his analysis considers ownership as the greatest possible interest in a thing which a mature system of law recognises. Furthermore, according to him ‘ownership comprises the right to possess, the right to use, the right to manage, the right to the income of the thing, the right to the capital, the right to security, the rights or incidents of transmissibility and absence

¹³⁶ *ibid.*

¹³⁷ Charles F. Floyd, *Real Estate Principles*, (Longman Group USA Inc. 1990).

¹³⁸ Stephen R. Munzer, *A theory of property*, (Cambridge University Press 1990).

¹³⁹ Pierre – Joseph Proudhon, *What is property?*, (Cambridge University Press 1994).

¹⁴⁰ Michael Weir, ‘Concepts of property’, [2001], vol 7 iss 1 *The National Legal Eagle*, < <http://epublications.bond.edu.au/nle/vol7/iss1/6> > accessed 1 Autumn 2001.

¹⁴¹ Alan Ryan, *Property*, (Open University Press 1987).

of term, the prohibition of harmful use, liability to execution, and the incident of residuary: this makes eleven leading incidents'.¹⁴²

Besnik Maho on the other hand gives an interpretation of the concept of 'ownership' as an economic and juridical concept. According to him ownership as an economic phenomenon is people social form of acquiring material and not material goods, regardless of whether these are individuals or collectives. In the meantime, ownership as a legal category, expresses the sanctioning of economic relations of ownership by law. Guaranteed by law, the economic ownership relationship takes the form of the legal property relationship.¹⁴³

Andrea Nathanaili¹⁴⁴ has defined the ownership right in two main senses: -

Objectively, ownership is the entirety of legal norms that sanction the economic relationship of ownership with respect to the acquisition of material and immaterial goods by humans.

Subjectively, ownership is the opportunity stipulated by law of the individual to enjoy, possess and dispose, material and immaterial goods, independently and within the limits of the law.

In regard to as above, ownership turns out to be the juridical relationship of a material and non-material nature, and property its object. Through the ownership, one has the right to use (and so to profit from) an asset, the right to exclude others from using the asset, and the right to transfer the asset to others. It is now widely recognized that ownership and control over assets such as land, and housing provide economic security, incentives for taking economic risks that lead to growth, and important economic returns including income. Access and control over property allows one to be self-sustaining, in multiple ways such as, personal use of the property, rental and sale of the property or use of it as surety to secure bank loans. All of this is of at most importance for women being self-sufficient and independent economically.

Access and control of property rights for women's economic empowerment

Property and economic empowerment seems to have a symbiotic relationship with regard to women's empowerment.¹⁴⁵

¹⁴² A. M Honore, 'Ownership', in Patricia Smith (eds), *The Nature and Process of Law. An Introduction to Legal Philosophy*, (Oxford University Press 1993), 370.

¹⁴³ Besnik Maho, *Fitimi I Pasurive te Paluajtshme (The acquiring of ownership of property rights)*, (Uet/Press 2009).

¹⁴⁴ Andrea Nathanaili, *Pronesia (The Ownership)*, (1974).

¹⁴⁵ Bina Agarwal, *Gender Challenges*, vol 2 (Oxford University Press 2015); Bina Agarwal, 'Gender and Command Over Property: A Critical Gap in Economic Analysis and

Women's access to productive resources in general, and land in particular, cannot be divorced from the broader context of macroeconomic policy, and the global economic system. Inclusive growth requires equal access to opportunities and resources for all segments of society, including both women and men. Considering what property rights means for the economy, it is easy to understand the importance given, in the recent studies and policies, to the property rights and control over them in terms of women development, and in particular women's economic empowerment.¹⁴⁶

Many of these studies came to the same conclusion leaving no doubt that if women are to become economically empowered attention to their inheritance and property rights is critical.¹⁴⁷

In her monograph "Are we not peasants too?" Bina Agarwal examines the issue through the triple lens of welfare, efficiency & equality and empowerment. Her research mainly focused on land rights in India, but I have included her reasoning to support my argument, because land is a very important form of property and the access of women to this form of property has a huge impact for women not just in India but all around the world. It is however particularly important in developing countries, where land is considered to be the form of property more likely to be accessed by women for their economic empowerment.

The basis of Agarwal's welfare argument regarding gender, property, and land rights is, that—given intra-household gender inequalities in the distribution of benefits, the differences in how men and women spend their incomes, and the positive links between children's nutritional status and income controlled by mothers—"the risk of poverty and the physical well-being of a woman and her children could depend significantly, on whether or not she has *direct* access to income and productive assets such as land, and not just access *mediated* through her husband or other male family members".¹⁴⁸

The thrust of Agarwal's efficiency argument is, that the ownership and control of land increases women's productive possibilities and the likelihood that they will have access to credit, technical assistance, and greater information. Secure ownership of land increases

Policy in South Asia', [1994] vol 22 iss 10 World Development, <[https://doi.org/10.1016/0305-750X\(94\)90031-0](https://doi.org/10.1016/0305-750X(94)90031-0)> accessed 1994.

¹⁴⁶ *ibid.*

¹⁴⁷ Klugman, Jeni, Lucia Hanmer, Sarah Twigg, Tazeen Hasan, Jennifer McCleary-Sills, and Julieth Santamaria, *Voice and Agency: Empowering Women and Girls for Shared Prosperity*, (World Bank 2014); Bina Agarwal, *Gender Challenges*, vol 2 (Oxford University Press 2015); Caren Grown, Greta Rao Gupta and Asihan Kes, *Taking Action: Achieving Gender Equality and Empowering Women*, (United Nation Development Programme 2005).

¹⁴⁸ Bina Agarwal, 'Gender and Command Over Property: A Critical Gap in Economic Analysis and Policy in South Asia', [1994] vol 22 iss 10 World Development, <[https://doi.org/10.1016/0305-750X\(94\)90031-0](https://doi.org/10.1016/0305-750X(94)90031-0)> accessed 1994, 1467.

women's efficiency, in that it directly increases both their capacity and incentive to invest, leading to higher productivity and production levels. Higher levels of production should lead to higher levels of income, which if also controlled by women, should lead to higher levels of consumption and well-being for women and their children.

Moreover, a woman's direct control of land, to the extent that it results in higher levels of investment in her own or her children's health and education, also results in greater labour productivity, or human capital accumulation.¹⁴⁹

Agarwal's third argument is framed in terms of achieving equality between men and women. Empowerment is a process by which women can gain power to significantly reduce the forces of institutional deterrents to their development. Equality is achieved when women earn the capacity to challenge the existing power relations which place them in an inferior position to that of men.¹⁵⁰

Evelin Namubiru Mwaura in her research in this area, argues that women's ownership of land and property can be potentially transformative, not only as a store of value but also as a means of acquiring other assets and engaging in other businesses.¹⁵¹ Particularly in developing countries, she highlights that reduction of the barriers to women's control of resources, particularly land, is critical in the fight against poverty.

Some others, such as MalliKarjuna and Naik, argue that access and control over assets is an indicator of women economic empowerment, women should possess control over various productive means like land, animals, machinery etc. as through this, a woman can have her own sources of income. She must have her way of earning income by participating in various economic activities. She should then be in a position to make a considerable contribution to the total income of the family from all sources.¹⁵²

On the other hand, in a study conducted in Kathmandu by Pandey and Brown,¹⁵³ in Nepal,

¹⁴⁹ *ibid.*

¹⁵⁰ *ibid.*

¹⁵¹ Evelin Namubiru Mwaura, 'Gender Equality and Development. Land Tenure and Gender: Approaches and Challenges for Strengthening Rural Women's Land Rights', (2014) World Bank – Women's Voice, Agency & Participation Research Series 2014 No. 6

<https://openknowledge.worldbank.org/bitstream/handle/10986/21033/927600NWP0Wome00Box385358B00PUBLIC0.pdf?sequence=1&isAllowed=y> accessed 2014.

¹⁵² K. G. Mallikarjuna & N. T. K. Naik, 'Indicators of Women Economic Empowerment' [2014] Vol 3 Iss 3 International Journal of Humanities and Social Sciences
<[file:///Users/kristikola/Downloads/--1398163935-9.%20Humanities%20-%20IJHSS%20-INDICATORS%20OF%20WOMEN%20ECONOMIC%20EMPOWERMENT%20-%20K.G.%20Mallikarjuna%20\(1\)%20\(1\).Pdf](file:///Users/kristikola/Downloads/--1398163935-9.%20Humanities%20-%20IJHSS%20-INDICATORS%20OF%20WOMEN%20ECONOMIC%20EMPOWERMENT%20-%20K.G.%20Mallikarjuna%20(1)%20(1).Pdf)> accessed May 2014.

¹⁵³ Shanta Pandey and George Warren Brown, 'Assets effects on women: A study of urban households in Nepal' (2003) Center for Social Development George Warren Brown School of Social Work Washington University
<<https://csd.wustl.edu/publications/documents/wp03-04.pdf>> accessed 3 April 2003, 11-12.

the effects of private property ownership on women were examined. Their findings indicated several key benefits for women in relation to property.

- In their study 40 percent of women indicated that property ownership *reduces their financial dependence on others, including their dependence on husbands.*
- About 11 percent of women indicated that property ownership would *increase their ability to support their family.* If they had property, these women would utilize that property to generate some income (e.g., collect rent or start a business).
- About 13 percent of the respondents indicated that with property comes *increased financial choice.* Owning property gives a woman a lot more discretion on how she might utilize that property. Ie:- a woman has property (or income), she can invest it in a business should she wish to do so. If she wants, she can also use it on social welfare. She does not have to get other's permission to decide how she should utilize that property or the income from it. Thus, she is economically empowered and has financial independence which intern she can pass on to her female children thus changing the way in which the society distributes wealth and power.

In addition to this, undoubtedly, access and control of property right because of all the benefits that come with it, provides women with a financial and economic security which means greater power and stronger voice, leading them to a better position in their families and community.

Inheritance as the main avenue for women accessing property rights

In the first part of this chapter were discussed the main reasons why women's economic empowerment was a concerning issue to be addressed, in order to improve women's standard of living. In the second part, it was argued that property rights and ownership have a major role to play on the process of empowering women economically. Precisely because property rights have such a great impact on women's economic independence, it is very important to find the main ways on how women can access property rights.

Around the world, property can be acquired through different ways such as through gifts, through inheritance, and through work/earnings.¹⁵⁴ The last also presupposes the ability to work and earn which requires some level of skill/education, and/or access to productive

¹⁵⁴ Kanakalatha Mukund, 'Women's Property Rights in South India: A Review', [1999] 34 Economic and Political Weekly <<http://www.jstor.org/stable/4408023>> accessed 06.07.2018.

resources (land, capital). Among other ways mentioned, this section discusses the importance of inheritance rights because this thesis mainly addresses the case of Albania and according to Arta Mandro report, the main way for women to access property rights in Albania is through inheritance.¹⁵⁵ At the same time in Albania women are discriminated with regard to inheritance rights,¹⁵⁶ indeed, all the struggles and challenges that women face with regard to accessing these rights are analysed in the first chapter.

However, women in Albania live in very bad economic conditions¹⁵⁷ and they are unable to access housing and property independently because of the limited economic resources.¹⁵⁸ Due to limited economic resources a woman's access to housing usually depends upon her relationship to a male, in most cases either her husband or father.¹⁵⁹ Apparently, this becomes a basis for men to impose their power and control over them which in many cases ends up manifested in domestic violence. In the light of the above analysis this section addresses the importance of inheritance for women to access property rights.

Through this section it is argued that, inheritance is the main avenue for women to access property rights.¹⁶⁰ Furthermore, precisely due to the importance that inheritance has as a means of transferring wealth from one generation to the next, women have been historically denied from these rights, leaving them in poverty and in a very vulnerable position within their family and the community.¹⁶¹

Inheritance is a significant means of transferring wealth from one generation to the next that can affect long term distribution of resources in the economy, and therefore, increasingly attracts attention from researchers and policy-makers working on women's economic empowerment. Women need a tool as such in order to access wealth to improve their

¹⁵⁵ Arta Mandro, *Të Drejtat Pronësore Të Grave Në Shqipëri (Women Property Rights in Albania)*, (UN Women, Swedish Government, United Nations Albania 2016).

¹⁵⁶ *ibid.*

¹⁵⁷ UN Women & UNDP, *Gender Brief Albania 2016*, (UN Women 2016).

¹⁵⁸ *ibid.*; A concrete analysis in the economic situation of women in Albania is provided in the third chapter, section one, p. 52-53.

¹⁵⁹ Arta Mandro, *Të Drejtat Pronësore Të Grave Në Shqipëri (Women Property Rights in Albania)*, (UN Women, Swedish Government, United Nations Albania 2016).

¹⁶⁰ Sebastian Galiani and Schargrotsky E, "Land Property Rights" in Sebastian Galiani and Itai Sened (eds), *Institutions, Property Rights, and Economic Growth: The Legacy of Douglass North* (Cambridge University Press 2014); See also, Renee Giovarelli, Susana Lastarria-Cornhiel, Elizabeth Katz, and Sue Nichols, *Gender Issues and Best Practices for Land Administration Projects: A Synthesis Report*, (2005) World Bank, <http://siteresources.worldbank.org/INTARD/Resources/Gender_land_fulltxt.pdf> accessed 3.10.2015; Klaus Denninger, Aparajita Goyal, Hari Nagaeajan, 'Women's Inheritance Rights and Intergenerational Transmission of Resources in India' [2013] Vol 48 Iss. 1 *Journal of Human Resources* <https://works.bepress.com/aparajita_goyal/7/> accessed December 2013; The Centre on Housing Rights and Evictions (COHRE) *Bringing Equality Home. Promoting and Protecting the Inheritance Rights of Women. A Survey of Law and Practice in Sub-Saharan Africa*, (COHRE 2004); International Organization for Migration, *Barriers to Women's Land and Property Access and Ownership in Nepal*, (IOM 2016).

¹⁶¹ *ibid.*

economic situation there for their position within their family and community. Similarly, with the Albanian case, other studies conducted in different parts of the world have emphasised the importance of inheritance as the key tool for women's access to property rights.¹⁶²

Deininger, Goyal, Nagarajan, in their study conducted in India, argue that at low levels of development inheritance constitutes the main avenue for women to access property rights.¹⁶³

At the same time, in South Asia, inheritance is often the vehicle that grants women property rights.¹⁶⁴ If a woman acquires land rights, it is more often via inheritance. In addition to this where women's economic resources are limited inheritance property rights appears to be the main avenue for accessing properties.

However, despite from being the main way of acquiring property, at the same time women's inheritance property rights are also the most systematically denied rights. The poverty among women around the world and their struggle for economic resources very often is linked with their discrimination on inheritance rights.

Different researches have explored the theory that behind the poverty of women and their struggling for better economic conditions, among other factors, lay their barriers on accessing inheritance rights.¹⁶⁵ As pointed out in the Deininger's, Goyal's and Nagarajan's, study conducted in India, at low levels of development inheritance constitutes the main avenue for

¹⁶² See Renee Giovarelli, Susana Lastarria-Cornhiel, Elizabeth Katz, and Sue Nichols, Gender Issues and Best Practices for Land Administration Projects: A Synthesis Report, (2005) World Bank, <http://siteresources.worldbank.org/INTARD/Resources/Gender_land_fulltxt.pdf> accessed 3.10.2015; The Centre on Housing Rights and Evictions (COHRE) *Bringing Equality Home. Promoting and Protecting the Inheritance Rights of Women. A Survey of Law and Practice in Sub - Saharan Africa*, (COHRE 2004); International Organization for Migration, *Barriers to Women's Land and Property Access and Ownership in Nepal*, (IOM 2016).

¹⁶³ Klaus Deininger, Aparajita Goyal, Hari Nagaeajan, 'Women's Inheritance Rights and Intergenerational Transmission of Resources in India' [2013] Vol 48 Iss. 1 Journal of Human Resources <https://works.bepress.com/aparajita_goyal/7/> accessed December 2013.

¹⁶⁴ Renee Giovarelli, Susana Lastarria-Cornhiel, Elizabeth Katz, and Sue Nichols, Gender Issues and Best Practices for Land Administration Projects: A Synthesis Report, (2005) World Bank, <http://siteresources.worldbank.org/INTARD/Resources/Gender_land_fulltxt.pdf> accessed 3.10.2015.

¹⁶⁵ The Centre on Housing Rights and Evictions (COHRE) *Bringing Equality Home. Promoting and Protecting the Inheritance Rights of Women. A Survey of Law and Practice in Sub - Saharan Africa*, (COHRE 2004); International Organization for Migration, *Barriers to Women's Land and Property Access and Ownership in Nepal*, (IOM 2016).; Sanchari Roy 'Empowering Women: Inheritance Rights and Female Education in India', (2013) Centre for Competitive Advantage in the Global Economy (CAGE) and Department of Economics, University of Warwick

<<https://pdfs.semanticscholar.org/b9cc/2545bf65e813940e73e8f8e3795c17b09fa3.pdf>> accessed 23 September 2013; Klaus Deininger, Aparajita Goyal, Hari Nagaeajan, 'Women's Inheritance Rights and Intergenerational Transmission of Resources in India' [2013] Vol 48 Iss. 1 Journal of Human Resources <https://works.bepress.com/aparajita_goyal/7/> accessed December 2013.

women to access property rights¹⁶⁶, there for the barriers that women have in accessing inheritance property rights have an immense impact in their economic situation.

In addition to this, Birte Scholz and Mayra Gomez in their research in Sub Saharan Africa, discuss the point that the issue of inheritance is argued to be especially vital for women, because it relates to the underlying reasons for women's disproportionately high levels of poverty, housing insecurity, food security and violence in the world.¹⁶⁷ Inheritance issues are inextricably intertwined with women's ownership of both land and housing, and therefore with their economic autonomy.¹⁶⁸ If women are unable to legally own, control and inherit property, they have little economic and personal autonomy because they fundamentally lack access to wealth.

According to Birte Scholz and Mayra Gomes, the fact that women cannot inherit land and housing after the death of their spouse or relative reflects the more general violation of women's right to adequate housing. In addition to this according to them, for millions of women in sub – Saharan Africa, the systematic denial of housing and property inheritance rights lies at the heart of their economic marginalization and housing poverty.¹⁶⁹

Because inheritance rights play such a fundamental role in the transfer of wealth in society they also relate directly to the protection of women's right to adequate housing and right to live in a physically and psychologically appropriate space in which to bring up your children.¹⁷⁰

Having said this, it becomes obvious the importance of inheritance as the main way to access property, but at the same time it becomes obvious that the discrimination of women in matters of inheritance left women in these difficult economic conditions, where they are struggling for housing, food and very often victims of violence.¹⁷¹

Similarly, to the Albanian society, while developing countries continue to improve economic opportunities for women, inheritance property right continues to be a very difficult door to be

¹⁶⁶ Klaus Denininger, Aparajita Goyal, Hari Nagaeajan, 'Women's Inheritance Rights and Intergenerational Transmission of Resources in India' [2013] Vol 48 Iss. 1 Journal of Human Resources < https://works.bepress.com/aparajita_goyal/7/> accessed December 2013.

¹⁶⁷ The Centre on Housing Rights and Evictions (COHRE) *Bringing Equality Home. Promoting and Protecting the Inheritance Rights of Women. A Survey of Law and Practice in Sub - Saharan Africa*, (COHRE 2004).

¹⁶⁸ *ibid.*

¹⁶⁹ The Centre on Housing Rights and Evictions (COHRE) *Bringing Equality Home. Promoting and Protecting the Inheritance Rights of Women. A Survey of Law and Practice in Sub - Saharan Africa*, (COHRE 2004).

¹⁷⁰ *ibid.*

¹⁷¹ International Organization for Migration, *Barriers to Women's Land and Property Access and Ownership in Nepal*, (IOM 2016).

accessed by women.¹⁷² The reasons for this seems to be different in different parts of the world, customs, tradition, religion, political will, but what remains constant is their economic difficulties and the growing poverty among them.

As the research literature informs us that property rights and ownership in terms of economic empowerment is so important to women, we should be able to understand how much more importance they have, in societies with low levels of development, where land and property are key assets, and an essential source of livelihood. Considering this, it is not surprising to find that all societies have developed rules and traditions to govern how land is transferred across generations with most of them reflecting the inferior status of women and the discrimination against them on grounds of gender.¹⁷³

¹⁷² The Centre on Housing Rights and Evictions (COHRE) *Bringing Equality Home. Promoting and Protecting the Inheritance Rights of Women. A Survey of Law and Practice in Sub - Saharan Africa*, (COHRE 2004); International Organization for Migration, *Barriers to Women's Land and Property Access and Ownership in Nepal*, (IOM 2016); Klaus Deninger, Aparajita Goyal, Hari Nagaajan, 'Women's Inheritance Rights and Intergenerational Transmission of Resources in India' [2013] Vol 48 Iss. 1 *Journal of Human Resources* < https://works.bepress.com/aparajita_goyal/7/> accessed December 2013.

¹⁷³ International Center for Research on Women, *Connecting Rights to Reality: A Progressive Framework of Core Legal Protection for Women's Property Rights*, (ICRW 2007).

Chapter III

Barriers to ownership of properties affecting women's economic empowerment and domestic violence in Albania

The first chapter addressed the concerning challenges and barriers that women in Albania face in accessing inheritance rights, as one way of acquiring property rights. The second chapters brought into focus what these rights mean for the economic empowerment of women. The third chapter aims to turn the attention to an analysis of how these barriers to ownership of property has been impacting women's economic empowerment in Albania, by providing an overview of Albanian women's economic situation, as described in the main document with regard to statistics and analysis of the gender gap, such as 'Women and Men in Albania 2018'¹⁷⁴ and some other reports such as the shadow report conducted by Center for Legal Civic Indicatives submitted to the 64th session of CEDAW; *Gender Brief Albania 2016*; 'National Strategy and its Action Plan' 2016.¹⁷⁵

This chapter also addresses the issue of domestic violence. In the literature, the relationship between economic dependency and domestic violence¹⁷⁶, has been well documented, as has the effect that property rights and ownership have in protecting women from domestic violence.¹⁷⁷ Furthermore this chapter aims to discuss previous literature that shows that both inheritance rights and property ownership for women in Albania are crucial, not just for their economic empowerment but also because accessing these rights gives women a range of options when they find themselves in a situation where they are the victims of domestic violence.

¹⁷⁴ Instituti I Statistikave (The Statistics Institute) (INSTAT), 'Women and Men in Albania 2018', (Austrian Development Agency and UN Women 2018).

¹⁷⁵ Shadow report conducted by Center for Legal Civic Indicatives submitted to the 64th session of CEDAW, 2011; UN Women & UNDP, *Gender Brief Albania 2016*, (UN Women 2016); Ministry of Social Welfare and Youth 'National Strategy and its Action Plan' (Ministry of Social Welfare and Youth 2016).

¹⁷⁶ Christine Hughes, Mara Bolis, Rebecca Fries & Stephanie Finigan, 'Women's economic inequality and domestic violence: exploring the links and empowering women, Gender & Development', [2015] Vol 23 Iss. 2 Gender & Development Journal <<https://www.tandfonline.com/doi/full/10.1080/13552074.2015.1053216>> accessed 13 July 2015.

¹⁷⁷ Bharati Basu & Felix Famoye, 'Domestic violence against women, and their economic dependence: A count data analysis' [2004], Vol 16 Iss 4 Journal Review of Political Economy <<https://www.tandfonline.com/doi/abs/10.1080/0953825042000256685>> accessed 2004; International Center for Research on Women 2006, *Property Ownership and Inheritance Rights of Women for Social Protection – The South Asia Experience Synthesis Report of Three Studies*, (International Center for Research on Women 2006).

Considering the role that property and its ownership play, as indicators of the level of economic empowerment of women in any society, barriers that were mentioned in the first chapter, such as patriarchal mentality, customary law influence, legal barriers, etc. (which I must emphasize are only some of the barriers to the ownership acquired through inheritance), affect economic empowerment of women in Albania. However, the barriers mentioned in this thesis are not the only ones. Women's property rights are broader, and so are the violations and challenges that women face. Nor can I say that women's economic situation in Albania comes about, only as a result of these barriers to ownership. However, considering the important role that this factor plays in the economic empowerment of women, one can argue that barriers and impediment toward women's accessing property rights in Albania, would appear to be one of the main causes of their low economic status and poverty. In the shadow report conducted by Center for Legal Civic Indicatives (submitted to the 64th session of CEDAW) we can find these two concepts linked in a direct way in the Albanian society. According to this report, which exposed another problem ie: - because of ownership barriers, they are not able to present their selves as borrowers for obtaining bank loans.¹⁷⁸ As a result, this barrier to obtaining money on trust, places serious restrictions on the decision paths and live choices open to them. It also reflects the fact that they do not have the financial security and status that comes with the property ownership, and thus they are restricted in strategies that could otherwise have been employed to improve their financial and indeed their housing situation.¹⁷⁹ For example, borrowed money could in theory be used to enable them to leave the family home and rent appropriate and safe accommodation for themselves and their children. Furthermore, money they borrowed could also empower them to make investments that could yield profits that would allow them, not only to pay back their loan, but to build on what they borrowed, thus improving their credit rating and credibility, should they wished to borrow more.

Indeed, if we have a look at the above-mentioned documents¹⁸⁰ outline with regard to some indicators of economic empowerment of women, we become aware of just how difficult their

¹⁷⁸ Shadow report conducted by Center for Legal Civic Indicatives submitted to the 64th session of CEDAW, 2011.

¹⁷⁹ *ibid.*

¹⁸⁰ Instituti I Statistikave (The Statistics Institute) (INSTAT), *Women and Men in Albania 2018*, (Austrian Development Agency and UN Women 2018); Shadow report conducted by Center for Legal Civic Indicatives

economic situation actually is, how disempowered they really are, and how few opportunities they have to access financial sources.¹⁸¹

According to INSTAT statistics: the employment rate for the population aged 15-64, is 64.3% for men and 50.3% for women. The structure of employees shows that 42.0% of women in the labour force are employed in paid positions while 23.0% of them engage in unpaid work in the family business.¹⁸² For employed men, these figures are respectively 37.0% and 12.0%. However, a significant percentage of men-namely 36%- in the labour force are self-employed, compared to 23.0% of women.¹⁸³ It is relevant to highlight that according to INSTAT the agriculture sector is the sector with the highest share of women employed.¹⁸⁴ Therefore, access to property rights is highly important for them.

With regard to the gender pay gap, in the light of INSTAT statistics, during 2017, the gender pay gap amounted to 10.5% compared to 6.3% in 2016.¹⁸⁵

Concerning, access of women and men to lending according to INSTAT the number of total borrowers reflect an increasing trend for loans obtained by women and men, thus maintaining almost similar differences between them. During the period 2013-2016, the number of women borrowers is almost half the number of men, as well as the average amount of loans obtained by a woman is half the average amount obtained by a man. The data of 2017 showing that the number of women borrowers has decreased from 51.0% to 38.0%. The number of men borrowers has increased during 2017, and continues to dominate the number of granted loans and are in higher amounts compared to women.¹⁸⁶

submitted to the 64th session of CEDAW, 2011; UN Women & UNDP, *Gender Brief Albania 2016*, (UN Women 2016); Ministry of Social Welfare and Youth *National Strategy and its Action Plan* (Ministry of Social Welfare and Youth 2016).

¹⁸¹ Instituti I Statistikave (The Statistics Institute) (INSTAT), *Women and Men in Albania 2018*, (Austrian Development Agency and UN Women 2018).

¹⁸² *ibid.*

¹⁸³ *ibid.*

¹⁸⁴ Women and men belonging to the 15-64 years old age group are mostly employed in the agriculture sector, but men's percentage employed in this sector is lower compared to women's. In 2017, the agricultural sector employed 42.5% women of employees, marking a reduction compared to 2016.

¹⁸⁵ Instituti I Statistikave (The Statistics Institute) (INSTAT), *Women and Men in Albania 2018*, (Austrian Development Agency and UN Women 2018).

¹⁸⁶ *ibid.*

In terms of other economic/financial resources, in Albania, apparently, between 45.5% and 25.6% of women have access to credit through family and friends, but not through the formal channels normally accessible by men.¹⁸⁷

Concerning property as an economic indicator, only 8 percent of women in Albania own land.¹⁸⁸

Considering these figures, it is difficult for women to become self-sufficient and economically independent due to a number of different factors such as limited economic opportunities, gender discrimination in terms of accessing inheritance and property rights¹⁸⁹, and time-consuming family responsibilities. Undoubtedly, aside from barriers to ownership of property, all of the above-mentioned factors are at the same time influencing Albanian women economic dependency day by day, leaving them totally vulnerable to violence.

Property ownership as one escape option from violence for women in Albania

Violence against women is a global phenomenon, a major public health problem, a gender inequality issue and a grave violation of human rights. WHO estimates that 1 in 3 women worldwide have experienced physical and / or sexual violence, mostly by an intimate partner.¹⁹⁰

For the purposes of this thesis, we define violence against women as: any act of gender-based violence (GBV) that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or in private life.¹⁹¹

In Albania, this phenomenon is very common¹⁹² and the roots of it are deep in the patriarchal mentality of the society.¹⁹³

¹⁸⁷ Center for Social and Economic Research (CASE), 'Women's Empowerment in the Mediterranean Region' (CASE 2017).

¹⁸⁸ CEDAW, Concluding observations on the fourth periodic report of Albania, 25 July 2016, CEDAW /C/ALB/CO/4.

¹⁸⁹ Discussed in the first chapter.

¹⁹⁰ World Health Organization (WHO), 'Violence Against Women – Key Facts', 29 November 2017 <<http://www.who.int/news-room/fact-sheets/detail/violence-against-women>> accessed 2017.

¹⁹¹ UN Women and United Nations Human Rights Office of the High Commissioner (OHCHR) 'Realizing Women's Rights to Land and Other Productive Resources' (United Nations 2013) <<http://www.ohchr.org/documents/publications/realizingwomensrightstoland.pdf>> accessed 23 June 2015.

¹⁹² CEDAW, Concluding observations on the fourth periodic report of Albania, 25 July 2016, CEDAW /C/ALB/CO/4.

¹⁹³ Ministry of Social Welfare and Youth 'National Strategy and its Action Plan' (Ministry of Social Welfare and Youth 2016).

According to INSTAT Albania,¹⁹⁴ in absolute terms, there is a total of 3,243 violated women in Albania. The highest percentage of women subject to domestic violence is noted in the Tirana region with 35,8 % violated women. Cases of domestic violence reflect the number of reports made to the police, and include cases in which this phenomenon has caused death of the person. In 2017, out of 50 murders, 26.0% of them came as a result of murders due to family relationships.¹⁹⁵

In the light of these figures, the main interest of this section goes to the question regarding the factors that lead women to stay in these abusive relationships?

Apart from the patriarchal mentality and customary law and the influence that they have, analysed in the first chapter, women's economic dependence is also a key factor influencing the domestic violence that they experience in their everyday life.

Domestic violence, around the world, while known to cross all social barriers, is thought to be more commonly exercised against women of lower social and economic status.¹⁹⁶ Basically, underlying domestic violence are gender norms, that result in differential power between men and women, particularly in access to, and control of, productive immovable assets.¹⁹⁷ Women experience gender-based disadvantage in access to such assets, which severely limits their ability to manage economic shocks and social risks. Partially, this situation in which women find themselves, is also as a result of the challenges and the denial that women face, in accessing their inheritance rights from the natal family.

This leaves them with no option but to go into marriage, without any property guarantee which would potentially give them security and balance in the relationship. Thus, they are immediately in a disadvantaged position in the marriage, under the control of their spouse. This becomes a basis for men to impose their power and control over them which in many cases is manifests itself in domestic violence and emotional abuse of these same women.

As Antonio Guterres points out, 'violence against women is fundamentally about power. It will only end when gender equality and the full empowerment of women is a reality.'¹⁹⁸ In addition to this also from a feminist perspective, violence against women is most

¹⁹⁴ Instituti I Statistikave (The Statistics Institute) (INSTAT), *'Women and Men in Albania 2018'*, (Austrian Development Agency and UN Women 2018).

¹⁹⁵ *ibid.*

¹⁹⁶ Social Research Centre, *Women and Children in Albania. Double Dividend of Gender Equality*, (INSTAT 2006).

¹⁹⁷ Amy Farmer and Jill Tiefenthaler, 'An Economic Analysis of Domestic Violence, Review of Social Economy' [1997] Vol 55 Iss 3 Review of Social Economy Journal
<https://www.tandfonline.com/doi/abs/10.1080/00346769700000004>> accessed 29. July 2009.

¹⁹⁸ 'UN urges global action so women and girls everywhere can live free from all forms of violence', (UN News 22 November 2017) < <https://news.un.org/en/story/2017/11/636972-un-urges-global-action-so-women-and-girls-everywhere-can-live-free-all-forms>> accessed 22 November 2017.

fundamentally based in unequal gender power relations.¹⁹⁹ From this perspective, men perpetuate domestic violence against women as an expression of power and control. Men raised in the patriarchal mentality were taught to believe, that they had the right and the privilege to dominate and control women. The consequence of such conditioning has led to unsafe and restricted life pathways for women, in an unequal world, dominated by men. In these cases, this power comes from the economic assets which are owned and controlled by the man, leaving women economically dependent on them.

This links between economic dependency and domestic violence have been addressed by Bharati Basu & Felix Famoye.²⁰⁰ In their study, they point out that this relationship is very strong arguing that, the more economically dependent the women are, the more violence they face from their partners. Furthermore, they suggest, that one reason for the positive association between dependence and the incidence of violence could be that economically dependent female victims are less likely to separate from their husbands, as they have no financial means to do so.

At the same time this link has been pointed out also by Farmer and Tiefenthaler, according to them, domestic violence is linked to gendered poverty in the sense that women who are economically dependent on men are unable to escape abusive relationships, and may be forced to tolerate some level of violence in return for men's economic support.²⁰¹

It follows that the economic dependency is one of the direct consequences of the barriers to women accessing inheritance and property rights as set down in legislation. As the International Center for Research on Women highlights 'in order to enable women to gain social protection to manage risk and social economic instability, the right to own and inherit property is critically important'.²⁰²

This importance has been emphasised also by recent research, which has suggested that security and ownership of land decreases the risk of domestic violence for some women, because economic independence means they are empowered to leave an abusive

¹⁹⁹ Daniela Rosche 'Close the gap: how to eliminate violence against women beyond 2015' (2015) Oxfam Working Paper <http://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bn-close-gap-violence-women-2015-110314-en_0_0.pdf> accessed 23 June 2015.

²⁰⁰ Bharati Basu & Felix Famoye, 'Domestic violence against women, and their economic dependence: A count data analysis' [2004], Vol 16 Iss 4 Journal Review of Political Economy <<https://www.tandfonline.com/doi/abs/10.1080/0953825042000256685>> accessed 2004;

²⁰¹ Amy Farmer and Jill Tiefenthaler, 'An Economic Analysis of Domestic Violence, Review of Social Economy' [1997] Vol 55 Iss 3 Review of Social Economy Journal <<https://www.tandfonline.com/doi/abs/10.1080/00346769700000004>> accessed 29. July 2009.

²⁰² International Center for Research on Women, 'Property Ownership and Inheritance Rights of Women for Social Protection – The South Asia Experience Synthesis Report of Three Studies', (ICRW 2006), 4.

relationship.²⁰³ The United Nations Development Programme had the same approach, in a study conducted in Asia Pacific region, with regard to this argument, they pointed out, that women's rights to inheritance and property are "... a crucial factor in reducing women's vulnerability to violence...."²⁰⁴

In addition to this, Landesa²⁰⁵ in collaboration with Heinrich Böll Foundation launched a study to understand the relationship between women's secure rights to land and the gender-based violence; if women's land entitlement resulted in reducing the violence against women. The study was conducted in three states of India: Karnataka, Telangana and Meghalaya with the purpose of understanding the nature of gender-based violence in both patriarchal and matrilineal systems. The research findings suggest that women's vulnerability to violence is related to their general vulnerability in socio-economic systems. Land ownership results in decreasing gender-based violence largely because of women's economic empowerment and their increased agency in decision-making over land, and its produce, as well as increasing women's confidence, self-esteem, freedom of mobility and market access. These factors enable women to have a stronger voice, regarding claims-making to rights and freedom, which in-turn act as deterrents to violence against women. because of the increased power it gives them.

Eventually, property ownership is what women, victims of domestic violence need, to be able to extend their capabilities, expand their negotiating power, and enhance their ability to address vulnerability. Therefore, property ownership is a critical factor of social protection for them against domestic violence and accordingly, this thesis suggests that for women in Albania, where domestic violence is a very widespread phenomenon ownership to property is their best way out from domestic violence.

²⁰³ Habitat for Humanity, 'Shelter Report 2016. Level the Field: Ending Gender Inequality in Land Rights' (Habitat for Humanity 2016).

²⁰⁴ UNDP, *Voices and Visions: The Asia Pacific Court of Women on HIV, Inheritance and Property Rights*, (UNDP 2008).

²⁰⁵ Govind Kelkar, Shantanu Gaikwad and Somdatta Mandal, 'Women's Asset Ownership and Reduction in Gender-based Violence' (Landesa & Heinrich Böll Foundation 2015).

Conclusion

In conclusion, inheritance property rights in Albania continue to be a very challenging and concerning issue for women. In terms of inheritance property rights, Albania has a progressive legal framework, in accordance with the international legal standards. Even though the law itself is gender neutral, the society, in some cases seems to have managed to find the mechanisms within the law to discriminate women and girls in accessing inheritance property rights. The analysis of the cited reports evidence, that due to certain factors such as, lack of knowledge and financial sources, social and cultural barriers, legal spaces and institutional barriers, women face difficulties in accessing inheritance property rights. The roots of these discriminatory practices are rooted deep in patriarchal mentality and customary law in Albania. These two elements, although replaced in recent years apparently non-discriminatory legislation continue to be influential in present day Albanian society.

Understanding the complexities of formal and customary personal laws is the key to any intervention that seeks to address women's inheritance rights to property. Also, because inheritance involves cultural practices, changes in inheritance behaviour require not just legal intervention but also social and cultural change.

The second chapter, provides a theoretical evidence, for the importance of property and property rights in the advancement of women's economic empowerment.

It explores the importance of each of these concepts individually, and then, in juxta position with each other. Through this chapter it becomes clear, that property and property rights are economic assets considered as key entrance to other capitals, thus making them the most critical factor, in this instance, for women's economic empowerment. In addition to this ownership is a legal relationship between the owner and the object, which provides the owner with the tools to enjoy, possess and dispose, these economic resources, independently and within the limits of the law, which can be used in order to improve their economic situation. Furthermore, inheritance rights in Albania and other developing countries, have been proven to be the most systematically denied rights but at the same time, the main way of acquiring property for women with limited resources, which makes it a very important factor to be explored with further research in the empowerment of women economically.

In the third chapter this thesis discusses that barriers to ownership leaves women economically dependent on husbands, who are the owners and controllers of the main economic assets, property rights. Therefore, the consequent economic dependency on their spouses and male relatives, leaves women in Albania in abusive relationships as victims of

domestic violence with no recourse to any financial assets which might enable and empower them to leave.

In order to change this power relationship based on economic dependence, my argument throughout this thesis has been, that if, and when, women are economically empowered (through access to inheritance rights in order to acquire ownership of property), they will then be in a much stronger position from which to challenge the abusive power relationships in which they are trapped, with the option to escape from it and establish new homes for themselves and their children with the resources available to them through access to their rights.

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